Ukrainian
Institute
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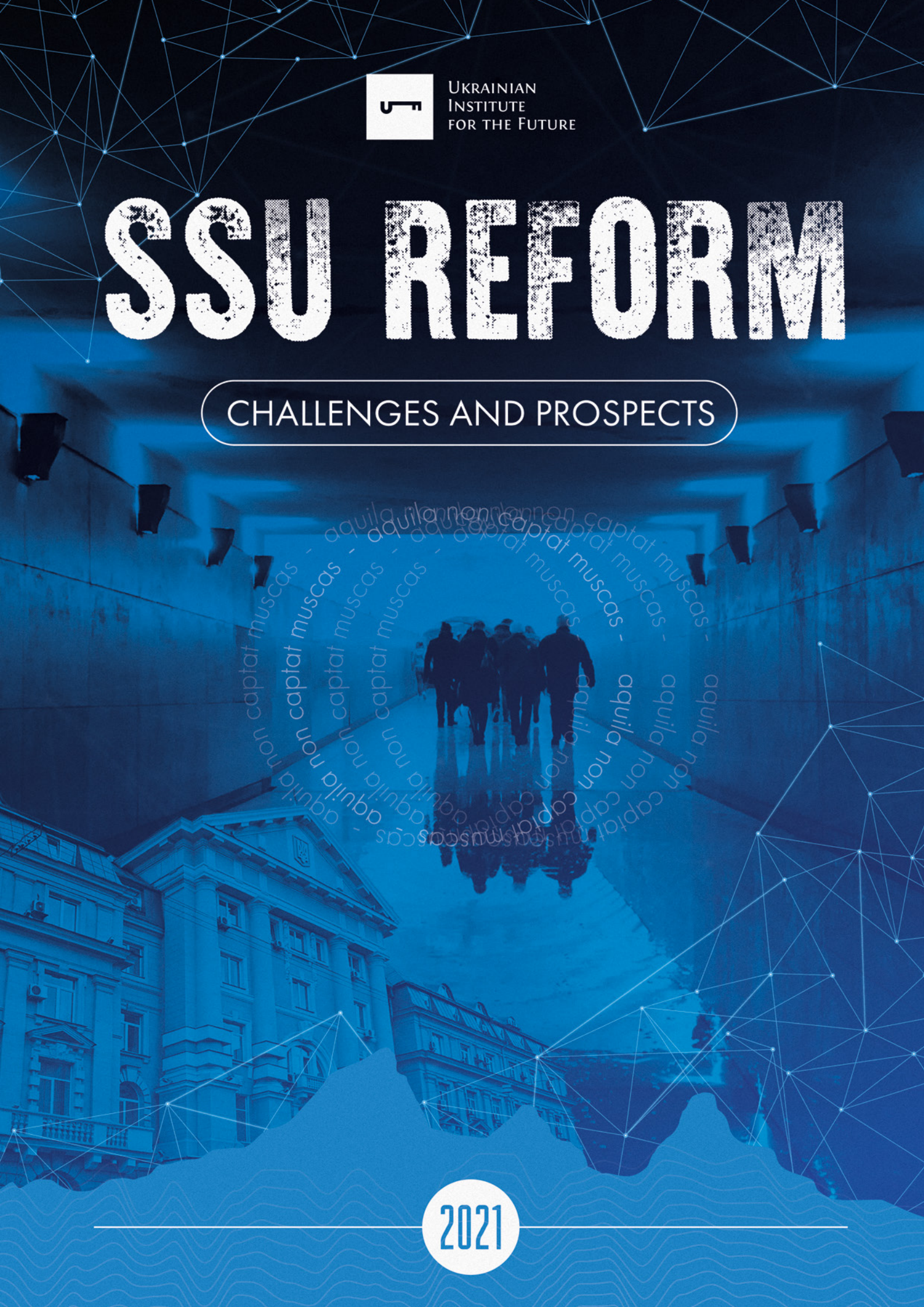
SSU REFORM

CHALLENGES AND PROSPECTS



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The study is dedicated to the issues of reforming of the SSU in post-Soviet Ukraine. In particular, we analysed the international experience of reforming the special services, a number of documents of UN, Council of Europe, the European Commission for Democracy through Law (Venice Commission), as well as legislation and practice of various countries of the world. A prominent place in the study is given to the analysis of observance of human rights in the activities of the SSU. The authors suggested the ways of reforming the SSU, based on the international standards and the best global experience. We have developed the recommendations concerning the model of SSU reform and implementation of parliamentary control. The study is designed for the members of parliament, employees of the public sector working in the fields of criminal justice and law enforcement, representatives of international and non-governmental organisations, researchers, and the general public.

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CONTENT

List of abbreviations:

AF – Armed Forces

AFU – Armed Forces of Ukraine

ARC – Autonomous Republic of Crimea

ATO – Anti-terrorist operation

CC – Criminal Code

CCP – Code of Criminal Procedure

CISS – Code of information that constitutes a state secret

CMU – Cabinet of Ministers of Ukraine

DSG – Department of the State Guard of Ukraine

EConvHR – European Convention on Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms

ECtHR – European Court of Human Rights

FIS – Foreign Intelligence Service of Ukraine

GS – General Staff of the Armed Forces of Ukraine

HRMMU – UN Human Rights Monitoring Mission in Ukraine

JFO – Joint Forces Operation

MoD – Ministry of Defence of Ukraine

MFA – Ministry of Foreign Affairs of Ukraine

MoH – Ministry of Health of Ukraine

MIA – Ministry of Internal Affairs of Ukraine

MID – Main Intelligence Directorate of the Ministry of Defence of Ukraine

MJ – Ministry of Justice of Ukraine

NABU – National Anti-Corruption Bureau of Ukraine

NAS – National Academy of Sciences of Ukraine

NBU – National Bank of Ukraine

NGU – National Guard of Ukraine

NF – Naval Forces of the Armed Forces of Ukraine

NPU – National Police of Ukraine.

NSDC – National Security and Defence Council.

PGO – Prosecutor General's Office of Ukraine.

RF – Russian Federation

SBI – State Bureau of Investigations.

SBSU – State Border Service of Ukraine.

SCES – State Criminal-Executive Service of Ukraine.

SCU – Supreme Court of Ukraine.

SESU – State Emergency Service of Ukraine.

SFS – State Fiscal Service of Ukraine.

SIZO – pre-trial detention centre

SMS – State Migration Service of Ukraine.

SOF – Special Operations Forces of the Armed Forces of Ukraine.

SPT – Subcommittee on Prevention of Torture.

SSSCIP – State Service for Special Communications and Information Protection of Ukraine.

SSU – Security Service of Ukraine.

StCU – State concern "Ukroboronprom".

VRU – Verkhovna Rada of Ukraine

UN – United Nations Organisation

UNHCHR – Office of the United Nations High Commissioner for Human Rights

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PREFACE

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The Security Service of Ukraine is preparing for the reform – the greatest in its 30 years of existence. During that time the SSU went through several waves of staff purges and formal lustrations; however, in its structure it remains a successor of the Soviet KGB. Back then the special service had to provide total control over all fields of economical and social life, over all citizens. The special service had to be numerous and have multiple branches, and its powers included everything – from the detection of dissent to control over the Armed Forces. During the reorganisations, the Foreign Intelligence Service and State Special Communications Service were spined off from the SSU and became separate agencies. Border guards have also not been subordinated to the SSU for a long time, unlike in Russia, where the border service is a part of the FSS (which is why the total number of servicemen is so great there).

The SSU, as the successor to the Soviet KGB, continues performing law-enforcement functions, and remains a militarized system, with limited internal and external control, which creates conditions conducive to abuse and violations of human rights.

Ukraine, unlike the countries of Central and Eastern Europe, did not introduce the measures of transitional justice[1]. When countries of Central and Eastern Europe condemned the communist regime and prohibiting the activities of the special services, which were the "branches" of the Soviet KGB, at the same time they carried out the lustrations (trustworthiness checks, or moral integrity checks), first of all among the employees of the security and defence sector, law enforcement bodies, and judges[2].

The reform of the Security Service of Ukraine should aim at the transformation of the special service into a small mobile high-tech structure, like the British MI5. The exhaustive list of the SSU's tasks should consist of counter-intelligence, combating terrorism, and protection of state secrets. Other functions could have been transferred to other bodies long ago, first of all, to the law-enforcement ones, to avoid duplication. Such were the reforms in the post-communist countries of the Central and Eastern Europe, and that experience has been successful. Experts from the Ukrainian Institute of the Future analysed the tasks and powers of special services of several European countries and identified the main lessons of both successful and problematic reforms.

In 2020 Verkhovna Rada of Ukraine was discussing the draft law No. 3196-d, which was introduced in its first edition by the President of Ukraine. In the process of refinement that bill changed significantly. However, at the time of its passage in the first reading on 28 January 2021 it still had enough contradicting provisions, and not all of them could be easily rectified during the preparation for the second reading.

One of the most urgent tasks of the reform is to deprive the SSU of the functions of combating corruption. It is the activities of the authorized anti-corruption subdivision of the SSU that make the most scandalous topic in the critical publications and journalistic investigations. A system of anti-corruption bodies has been created in Ukraine (in particular, NABU, SAP, SBI /with regard to investigation of those corruption-related crimes that are not in the investigative jurisdiction of NABU/). Although the level of their effectiveness does not always satisfy the society, the anti-corruption functions of the SSU have lost their relevance. By the way, in the discussion on depriving the SSU of the anti-corruption function reached consensus of all interested parties.

Economy is a more difficult question. Representatives of the SSU insist on keeping the functions of counter-intelligence protection of the economy. For that purpose they suggest to keep the right to enter the premises of enterprises and customs posts, and to give mandatory instructions to business entities. Critics of this approach warn against the risk of interfering in business activities, obstructing the business and forming corruption mechanisms. An effective compromise option could be to keep the powers of the special service to combat economic espionage, provided, however, that when such facts are found, operational activities should be carried out, and the management of the enterprise or the authorized law-enforcement bodies should be notified. There should be no right to stop the customs clearance of containers, nor other tools of direct pressure on the business. A similar approach should also exist in the development of the organised crime groups, only in cases where contacts with identified spies have been discovered, and in coordination with the law-enforcement body in charge of the respective cases.

Another debatable issue is whether the investigation functions should be kept or transferred. The SBI stated that it is not ready to have the entire investigative jurisdiction of the SSU added to its duties within 1-2 years. On the other hand, when the scope of powers will be reduced, the number of investigations, which is not too high anyway, will also decrease significantly. A special subdivision within the SBI, formed using former investigators from the SSU who have the relevant competences, could investigate the cases against the spies and terrorists.

There has also been a global problem that manifested itself during the preparation of the bill: how to find the balance between the interests of security on one hand, and human rights on the other hand. Despite all military threats, in time of peace the special service shall only carry out operational measures concerning the citizens with the permission of a court and under the supervision of a prosecutor's office or a court. No exceptions or special cases here. The suggestion to provide the SSU with the powers to terminate the activities of political parties and television channels without a court decision is dangerous. The problem of Russian propaganda does indeed exist, but it should be solved within the framework of the Constitution of Ukraine, keeping in mind the guarantees of the freedom of expression and freedom of political activities. Assessment of the political component of the editorial policy is not something the SSU should do; its task is to detect any contacts with special services of other countries and receival of financial resources from them.

A separate important matter is that of civil and parliamentary control over the activities of the SSU. On one hand, the personal composition and job responsibilities of staff members should be protected as state secrets. On the other hand, however, the Head of SSU must report to the Parliament, with partial limitations on disclosure of information about operational activities. There must exist a clear list of public information, access to which cannot be limited by a decision of an official of the SSU.

In the first section of this study, the authors analyse the international standards used in the work of special services, and provide examples from particular countries. The second section is the result of monitoring of observance of human rights in SSU's activities. Based on such monitoring, mechanisms are proposed to be used for protection of that component in the reformed special services are suggested. The third section contains the conceptual framework for the creation of the new SSU based on a qualitatively different model taking into account the best international practices. The proposals concerning the implementation of effective civil and parliamentary control over SSU's activities are also attached to the study.

In the English translation of our book we use the term "special service", which may be unusual for some of our readers. This has been, nevertheless, a conscious decision by the authors and the translator. The reasoning is based on the fact that there are government agencies in post-Soviet countries, whose scopes of activities and powers, while similar to a large extent to those of security and intelligence services in the West, are often much broader and specific to post-Soviet countries.

The Security Service of Ukraine is an example of such an agency. In fact, the authors anticipate that one of the results of the reform should be its transformation from a "special service" (in that particular post-Soviet meaning) into a security service in the meaning that those words have in many well-developed countries.

The study will be useful for the People's Deputies (members of parliament), human rights activists, SSU staff members, and experts in various fields preparing the proposals for the reform of the Security Service of Ukraine.

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INTERNATIONAL EXPERIENCE OF REFORMING SPECIAL SERVICES

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International standards of activities of special services

The problems of identifying the international standards applicable to the Security Service of Ukraine lie in the fact that the post-Soviet understanding of the national security services differs significantly from the Western approaches. In particular, in the Western practice the concept of "intelligence" services usually includes organizations that carry out both external and internal intelligence in order to get information on the threats to the national security of the state. Accordingly, the requirements and standards regarding the activities of "internal" and "external" intelligence services are put forward based on the same principles of protection of human rights and observance of the law. In other words, in the Western practice there is usually no one special service that would be more "important" or "universal" than the others. Special services are not differentiated based on departmental affiliation or functionality. Each special service has its own clear tasks that are implemented within a strict legislative framework and under constant civil democratic oversight. Importantly, such approach does not decrease their efficiency and does not obstruct their constant development and improvement; on the contrary, it causes constant improvement, modernization and prevents the abuse.

The special services hold special place in the security and defence sector of a democratic state. Despite the different understanding and the structural peculiarities of special services in each state, there is the general understanding that special services are government agencies that collect, process, analyse special information and transfer it to the relevant state entities responsible for the maintenance of national security. Information from the special services is crucial in making strategic decisions by the country's top leadership and directly influences the functioning of the state both in internal and external policy.

At the same time, the special services include the organisations that counteract the threats to the national security both within and outside the country. The definition of special services also covers the military intelligence, intelligence bodies of the police, those of the border service, civil intelligence services (internal and external), as well as intelligence structures of the Ministry of Finance, intelligence services to counter the cyber threats etc.[3]

The special services differ from other state institutions by having the special powers to collect the information, in particular, the right to eavesdrop, the right to conduct the secret surveillance, the right to engage secret informants, and the right to enter residential premises without the knowledge of their owners. Those functions of the special services may create conditions conducive to violations of the universal human rights, which is not acceptable in a democratic country.

Council of Europe Commissioner for Human Rights has published a special report which identifies the where activities may affect human rights, which also shape the general limitations regarding their powers, in particular[4]:

- Security service activities that affect the personal integrity, including the right to life, the right to personal liberty, as well as the right to not be subjected to torture or inhuman, cruel and degrading treatment.

- Security service activities that have implications for the private and family life. In many countries this is the most wide-spread way in which special services interfere with human rights.

- Influence of the activities of the special services on the freedom of expression, assembly, and association.

- Influence of the special services on the fair trial, including surveillance over communications between lawyers and their clients, as well as restricting the right to fair trial by information classification measures in the context of protection of state secrets in the cases involving special services.

The classic approaches to the definition of the optimal functionality of so-called "internal" special services (meaning the special services that act within the country) were formulated in the Recommendation 1402 of the Parliamentary Assembly of the Council of Europe issued in 1999[5], in particular:

Internal special services perform a valuable service to democratic societies in protecting national security and the free order of the democratic state.

At the same time, internal special services often put the interests of national security (or the aspects that they may believe important for national security) above respect for the rights of the individual. Internal special services are often inadequately controlled, which causes a high risk of abuse of power and violations of human rights, in conditions when legislative and constitutional safeguards do not work.

The risk of abuse of powers by internal special services, and thus the risk of serious human rights violations, rises when special services are organized in a specific fashion and wield certain powers, such as preventive and enforcement methods that involve forcible means (for example, the powers to search private property, investigate criminal cases, arrest and detain people), when they are inadequately controlled (by the executive, legislative and judiciary power), as well as when there are too many special services.

Because of that it is suggested that the internal special services should not be allowed to run criminal investigations, arrest or detain people, nor be involved in the fight against organised crime, except in very specific cases, when organised crime poses a clear danger to the basic foundations of a democratic state. Any interference of the operational activities of internal special services with ensuring human rights and fundamental freedoms as protected in the European Convention on Human Rights, should be authorised by law, and preferably through a court, before such activity is carried out. control of the internal special services, both a priori and ex post facto, by all three branches of power, is especially vital in this regard.

The sole task of the internal special services must be to protect national security, which means combating clear and urgent dangers to the democratic state and society. Economic problems, or the fight against organised crime as such, should not be part of activities of the internal security services. Internal special services can only deal with the economy or organised crime when they pose a clear and present danger to national security.

The executive branch should not have the right to define the areas where internal special services are to be used. Instead, those areas should be defined by law and interpreted in courts, if there are questions or doubts concerning their limits. Internal special services should not be used as a political tool to oppress political parties, national minorities, religious groups or other groups of population.

Internal special services should not be organised on military principles. Internal special services should not perform law-enforcement functions (in particular, criminal investigation) because of the high risk of abuse of powers and duplication of activities of the traditional police.

Example models of European internal special services

In order to formulate a general understanding of an approximate modern model of a European special service that maintains national security on the territory of the country (i.e., so-called internal special service), we would first examine several examples of the "classic" special services in Western Europe, and then (against that background), the reformed internal special services of Eastern European countries of the former socialist camp.

Although currently not all internal special services of the European countries (both post-socialist ones and those of Western Europe) adhere to the letter of international recommendations and standards, in general, those standards are the landmarks that can provide the optimal balance between the observance of human rights and effective performance of tasks by the special services.

The Netherlands

In the Netherlands there is an integrated service that performs both foreign intelligence and counteraction of threats within the territory of the Netherlands – **the General Intelligence and Security Service** (Algemene Inlichtingen-en Veiligheidsdienst - AIVD) of the Ministry of Internal Affairs.

According to the 2017 Intelligence and Security Services Act, (Wiv 2017)[6], AIVD shall focus its activities on the following:

- terrorism, radicalism, Islamic fundamentalism;
- far-left and far-right extremism;
- covert intervention of foreign countries;
- dissemination of weapons of mass destruction;
- activities of intelligence services of other countries.

At the same time, according to the law, AIVD performs its activities through:

- investigating activities of individuals and organisations;
- conducting the security checks;
- Contributing to security in critically important areas of activities;
- Obtaining information abroad;
- Analysing the risks and threats;
- Providing available information about specific individuals and organisations.

AIVD, as well as the military intelligence of the Netherlands, MIVD, became known after the successful operations against Russian hackers. In 2018 special services of the Netherlands successfully defeated the attack of the hackers from the Main Department (formerly called Main Intelligence Department) of the al Staff of Russian Armed Forces, who tried to hack the servers of the Organisation for the Prohibition of Chemical Weapons in The Hague. Even more well-known is the operation of AIVD against the group of Russian hackers called Cozy Bear, which is believed to be associated with the Russian Foreign Intelligence Service. AIVD staff members were able to hack the network of Cozy Bear and establish the facts of its illegal activity against the Netherlands as well as others, in particular, against the USA.

Also, one of the features of activities of AIVD within the country is its close cooperation with regional investigative subdivisions of the national police. This allows AIVD to provide information to the police concerning persons, organisations and activities that can pose danger for the society and the state. That said, AIVD itself does not perform any functions of the police, including criminal proceedings.

AIVD obtains information, identifies threats, and provides the relevant data to the bodies that will directly make decisions and carry out criminal investigations in specific cases.

France

The functions of the internal special service are performed in France by the **Directorate General of Internal Security** (Direction générale de la Sécurité intérieure, DGSI). DGSI was created in May 2014, as part of the intelligence community reform, through modernization of the Central Department of Internal Intelligence (DCRI), which, in turn, was created in July 2008 by merging two special services – the Central Directorate of General Intelligence (RG) and the Territorial Surveillance Directorate (DST). As a result, the new Special Service DGSI changed its subordination: from the Office of the Director General of the National Police DGSI was transferred under the direct management of the Minister of Internal Affairs.

The scope of functions of **DGSI** is an example of classic approaches to structuring the internal special service of a democratic country[7]:

- fight against the foreign intervention, including activities of foreign intelligence services;
- prevention and termination of terrorist acts or acts that undermine security of the state, territorial integrity, or the functioning of French state institutions;
- prevention and termination of actions that disclose the national secrets or information concerning the economical, industrial or scientific potential of the country;
- surveillance over persons, social movements, groups and organisations involved in subversive activities or those that pose a threat;
- counteracting unauthorized dissemination of the weapons of mass destruction;
- monitoring of the activities of international criminal organisations that can pose a threat to the national security;
- prevention and termination of crimes related to information technologies and communication systems.

At the same time, contrary to international standards, **DGSI** has the functions of pre-trial investigation and can conduct the entire set of operative measures that, according to the legislation, are carried out by entities within the Ministry of Internal Affairs (in particular, the National Police). **DGSI** has an operative search group, which is to carry out detentions, searches and other active operational activities.

The cause of an active reform of internal special service of France, which is, essentially, carried out constantly for the last 15 years, is the intention to adapt the structures created back in XX century to the current requirements and threats. The resonant terrorist attacks in France became the main indicator of success/failure of **DGSI** activities.

As it turned out (mostly post factum), the special service had information about potential terrorists who subsequently organised or performed the terrorist acts in France, but it did not take effective steps to prevent their plans. Because of that, DGSI is under constant strict control of political forces, and particularly the parliament (first of all, the opposition), which causes constant transformation of the special service in search for the optimal model of functioning in the modern conditions.

Germany

The internal special service of Germany, **the Federal Service for the Protection of the German Constitution** (Bundesamt für Verfassungsschutz, BfV), is part of the Ministry of Internal Affairs . BfV is an example of an internal special service whose main task is protection of the state and society from the threats that arise as a result of the attempts directed:

- against the free democratic system of Germany;
- against the very existence of Germany or one of its federal lands;
- against activities of the state bodies of Germany;
- against the national interests of Germany abroad, including with the use of violence;
- at the ruination of the international mutual understanding, especially against the peaceful coexistence of peoples.

Furthermore, the competence of BfV includes the counteraction of intelligence activities of the foreign countries (counter-intelligence), protection against sabotage and prevention of access to the confidential information.

BfV places a special emphasis in its activities on counteracting the far-right parties, including the neo-Nazi ones, as well as far-left, Islamic and other extremist organisations, especially those involving foreign citizens.

At the same time, BfV does not have powers to conduct pre-trial investigations.

Romania

The model of transformation of the special services of Romania from the socialist "secret police" (that was officially called **the Department of the State Security**, and unofficially – **"Securitata"**) is one of the best examples of success of the radical and deep steps of transition from the "Soviets" to the best practices of the modern special services of the democratic countries.

The **"Securitata"** of the socialist Romania was created with direct participation of the Soviet special services, first of all, KGB. The total control of the population, fight against the political dissent, suffocation of the intellectuals, dissidents, writers, movie directors is the standard set of functions of the socialist special services, the cruellest of which were the Romanian "Securitata", "Shtazi" in the GDR and KGB in USSR. The unauthorized entry to the private premises, wiretapping of telephone lines, monitoring of post were the common practice of activities of the totalitarian socialistic special services.

The fall of the dictatorial regime of Ceausescu (in 1989) led to radical and rapid changes in the activities of the Romanian secret services. In 1991 Romania adopted a Law on reorganisation of "Securitata" and, subsequently (in 1992) created the independent special services with clear tasks and functions:

- **Serviciul Român de Informații** – Intelligence service;
- **Serviciul de Informații Externe** – External intelligence service;
- **Serviciul de Protecție şi Pază** – Protection and defence service (of the leadership of the country);
- **Serviciul de Telecomunicații Speciale** – Special communication service;
- **Jandarmeria Română** (Gendarmerie).

The Intelligence Service (CPP) became the internal secret service of Romania that can be considered an analogue to the SSU. The main functions of the CPP, provided by the law[9], are:

- The collection, processing and preparation of information with the aim of preventing any actions that can pose a danger to the national security of Romania;
- Protection of the state secret;
- Fight against terrorism;
- Counteracting the intelligence activities of the foreign countries on the territory of Romania.

The special law that regulates the activity of the CPP clearly states that the Service cannot conduct the criminal investigations. Furthermore, CPP is prohibited to use the coercive actions, such as arrest and detention, or use its own places of detention.

Essentially, CPP is the optimal counterintelligence service of a post-Soviet democratic country. At the same time, CPP is deprived of any abnormal functions. That also concerns the investigation of the economic crimes and fight against the corruption. Instead, the specialized anti-corruption body functions in Romania – National Anti-Corruption Directorate, which has the functions of the criminal investigation of the corruption-related crimes.

Bulgaria

In Bulgaria, where during the period of socialism there was a powerful totalitarian **Committee of State Security** (short name **"Sigurnost"**), rapid and deep reforms in the field of activity of the special services also took place. In particular, there was created **the National Intelligence Service** (the external intelligence that is currently called the State Intelligence Agency) and internal special service – **the State Agency of National Security**, which can be considered the Bulgarian analogue of SSU.

According to the law[10], SANS performs the following tasks:

- Counteracting the activities of the foreign intelligence services;
- Counteracting the threats to sovereignty, territorial integrity of the state and unity of the nation;
- Counteracting the anti-constitutional actions;
- Counteracting the illegal use of force and state property for the political purposes;
- Counteracting the threats in the ecological sphere;
- Protection of the state secrets;
- Protection of the strategic infrastructure objects;
- Protection of the communications and information systems;
- Counteracting the international terrorism and extremism;
- Preventing the violations in the field of international trade in military and dual-use goods, as well as the distribution of the weapons of mass destruction.
- Prevention of threats related to migration processes.

The functions of **SANS** include counteracting the threats in the field of economical and financial security of the state. However, since **SANS** does not have the powers to conduct the pre-trial investigations, in this case the issue concerns the collection of information concerning the economical and financial threats that are formed abroad, and not the actions that can be used for the pressure on the business or the financial structures in order for the employees of **SANS** to obtain an improper benefit.

It is interesting, that before 2018 the sphere of activity of **SANS** included the issues of counteracting the corruption, if corrupt acts committed by high-ranking officials threatened the national security of Bulgaria. However, the relevant provision was excluded from the Law on **SANS**, and the functions of counteracting the corruption were fully transferred to the specialized anti-corruption bodies that in 2018 underwent a systemic reforming. One body was created instead of several structures – the Commission for the Counteraction of Corruption and confiscation of illegally acquired property. The anti-corruption subdivision of **SANS** was also transferred to the commission.

As a result, currently **SANS** has the functions that fully correspond to the international standards for the internal special services.

Poland

Unlike Romania and Bulgaria, in Poland the reform of the special services dragged on and became a victim of internal political processes and interdepartmental contradictions. As a result, the process of transformation of the Polish special services have similar problems with Ukraine.

The internal special service of Poland – **the Internal Security Agency** (Agencja Bezpieczeństwa Wewnętrznego, ABW) – has a traditional for the post-Soviet countries set of functions. It was created in 2002 as a result of liquidation of the Department of State Protection and its division into internal special services (ABW) and external intelligence (Agencja Wywiadu), In addition to the counter-intelligence activities, fight against terrorism and protection of the state secrets, the Internal Security Agency is also responsible for counteracting the illegal drug trafficking, organised crime, corruption and economic crimes.

In particular, **ABW** monitors the privatization of the state enterprises, controls the use of EU funds by the state bodies of Poland, monitors the financial activity of the governmental structures, including, for example, the activities of the General Directorate of Railways and Roads. At the same time, in contrast with the recommended international standards, **ABW** is authorized to conduct the criminal investigations, operational and search activities, it has the right to detain the suspects, examine the premises, take care of cargo.

As a result, the activity of **ABW** is quite colourful, and in this sense it looks more similar to SSU than to the best European models. In other words, ABW is not an example of the perfect European internal special service, created from scratch based on the recommendations of the states with developed democracy, and looks more like a successor of the socialist secret services that gradually change under the pressure of the civil society and during the democratic civil supervision.

At the same time, in parallel with the Internal Security Agency in Poland, there is a separate specialised anti-corruption body – the Central Anti-Corruption Bureau, which is responsible for the investigation of corruption-related crimes and has the right to carry out the pre-trial investigations. As a result, apparently, there are conditions for the duplication of functions between the Internal Security Agency and the Central Anti-Corruption Bureau, which, of course, leads to a decrease in the efficiency of both institutions.

Since 2015, when the "Law and Justice" party won the parliamentary elections, the special services started playing an incredibly important role from the point of view of influence on the political opponents of the ruling party. The persons from the top leadership of the ruling party "Law and Justice" are appointed the Heads of the special services, and the activities of the special services have a full support of the prosecutor's office, headed by the deputy of Seimas from "Law and Justice". The election program of "LaJ" provided that the special services (including ABW) will undergo massive changes[11].

The key ones should be the following:

- Depriving ABW of the powers of investigation;
- Depriving ABW and Military Counter-Intelligence Service of the right to issue the certificates of security for gaining access to the secret information and transfer of those rights to the Coordinating Minister of the special services;
- Depriving ABW of the powers to fight the economic crimes and corruption.

It should be noted that those announced changes significantly remind the propositions for the reform of SSU suggested by Ukrainian experts as necessary for the transformation of the Security Service of Ukraine into a modern internal special service.

However, these reforms have not been launched in Poland. Instead, there was the politicization and ideologization of the work of the special services, which influenced the stability of their work and caused staff problems in ABW.

In general, the example of inefficient reforms of the special services in Poland can be used in Ukraine as a negative experience that should not be repeated. In particular, it is apparent that the special services (especially the internal special service) should not be used as a tool of internal political struggle, they must act in the framework clearly defined by the legislation and for the protection of the national interests. Thus, the parliamentary supervision over the activity of the special services should be one of the efficient tools of observance of lawfulness. The internal special service should focus on counteracting the threats to the national security, and should not duplicate the law-enforcement or anti-corruption bodies.

Other countries of Central and Eastern Europe

In most other countries of Central and Eastern Europe of the former socialist camp there are reforms of internal special services that correspond to the international standards.

In particular, in **Czech Republic the Security Informational Service** (Bezpečnostní informační služba, BIS) is a classic European internal special service with clear powers of counteracting the threats on the territory of Czech Republic, in particular[12]: terrorist threats; the actions that threaten the security and economic interests of Czech Republic; the actions of foreign intelligence services on the territory of CR; intents and actions undermining the democratic foundations, sovereignty and territorial integrity of CR; organised crime; the actions that threaten the state secret. At the same time, BIS does not have powers to conduct the pre-trial investigations or detain, arrest or question people. Furthermore, BIS does not prevent or counteract the corruption.

In **Slovakia** there is an integrated intelligence structure – **the Slovak Information Service** (Slovenská informačná služba, SIS), which is also responsible for the foreign intelligence and counteracting the threats to the national security on the territory of Slovakia[13].

The internal component of SIS, as recommended by the international organisations, is focused on counterintelligence and counter-terrorist activity, and does not have the powers concerning the pre-trial investigations (although it collects and analyses the information concerning the organised crime). Anti-corruption cases are managed in Slovakia by a separate subdivision of the police – the National Crime Agency.

In **Latvia** there is also an integrated special service – **the Bureau of Defence of Constitution** (Satversmes Aizsardzības Birojs, SAB), which performs the functions of foreign intelligence and internal counterintelligence, as well as the protection of state secret[14]. SAB is clearly focused on those tasks and does not have powers of pre-trial investigation, investigation of economic crimes or anti-corruption activity.

In **Lithuania** there is a similar model of integrated special service – **the Department of State Security** (Valstybės Saugumo Departamentas, VSD), which is responsible for the intelligence and counterintelligence, as well as the protection of state secret[15]. The counterintelligence component of VSD focuses its activities on forecasting, defining and counteracting the threats to national security on the territory of Lithuania, with a special emphasis on prevention of intelligence activities of the foreign countries. At the same time, VSD does not conduct the pre-trial investigations, does not investigate the economic crimes and does not conduct anti-corruption activity.

Estonia has a special approach to the build and functioning of the internal special service – **the Internal Security Service** (Kaitsepolitseiameti, KAPO)[16], which is a part of MIA of Estonia and has a wide range of tasks: between the counterintelligence and anti-terrorist activity, protection of state secret or counteracting the corruption and criminal investigation in the fields threatening the national security. Meaning, that unlike most internal special services of the countries of Eastern Europe, Estonia has its own model, which, however, in any case is not similar to the post-Soviet approaches of the total control that are still practiced in Russia, Belarus, and, to some extent, in SSU.

International experience of providing the supervision over the special services

The generally accepted principle of ensuring lawfulness of activities of special services is the obligation of every state to create the relevant conditions – including the system of supervision – in which the special services would act in accordance with the international law, in particular – the provisions laid down in the Statute of UN and the International Covenant on Civil and Political Rights. Furthermore, there are several general standards and examples of best experience that contribute to the creation of the system of efficient supervision over the special services.

Those Standards, studied and clearly defined by Geneva Centre for the Democratic Control of Armed Forces (DCAF)[17], were subsequently used by the UN Special Rapporteur on the Development and Protection of Human Rights and Fundamental Civil Liberties in the Context of the Fight against Terrorism, to form the recommended principles for the activity of the countries in this area[18].

In general, these principles, which the state should be guided by when creating a system of supervision over the activities of special services, are as follows:

- Supervision over the activities of the special services is carried out by a complex mechanism, consisting of internal, executive, parliamentary, judiciary and specialized supervisory institutions. The effective system of supervision over the special service must include at least one civil institute that would be independent both from those special services and from the executive power.

- The complex nature of the supervision over the special services and the variety of its participants (Parliament and its committees, governmental structures, Ombudspersons, civil society, media) allows to cover all aspects of activity of the special services. In particular, this concerns observance of the requirements of the law; efficient activity of the special services; the connection between the result obtained and the resources expended; financial aspect and the practice of management of special services.

- The supervisory bodies must have the necessary powers, resources, knowledge and experience for initiating and conducting their own investigations. Furthermore, they must be provided with the right to have a full and unobstructed access to information, officials and objects necessary to perform their task. The supervisory bodies have the right to expect the full cooperation of the special service and the leadership of the law-enforcement structures during the work with witnesses and gaining the access to the necessary documents and other materials.

- The supervisory bodies must take all necessary measures to protect the secret information and personal data to which they receive access in the process of their activity. If the employees of the supervisory bodies violate the requirements concerning the protection of information and personal data, they may be subject to sanctions in the procedure provided by the law.

Currently in Ukraine there is no complex system of supervision over the activity of the secret services, which would correspond to the international recommendations. Essentially, Ukraine lacks a complex approach that implies the presence of internal, executive, parliamentary, judiciary and specialized supervisory institutions. Also, there is no institution of special Ombudsmen who would constantly supervise the observance of principles and best practices of performance of the tasks of the special services.

The law on the national security of Ukraine provides the creation of a separate parliamentary committee that should provide "...the guarantees of strict and unconditional observance of the requirements of the Constitution of Ukraine on ensuring national security by state bodies of special purpose with law enforcement functions, law enforcement bodies of special purpose and intelligence bodies"[19]. However, the process of creation of such committee has stopped, the legal basis for its operation has not been created. At the same time, in early 2019 an attempt was made to adopt the Draft Law "On parliamentary control over the observance of the provisions of the laws in the activity of the special services and law-enforcement bodies of the state"[20]. However, as a result of several months of discussion, it was revoked from the review by the parliament.

The world practice shows that the essence of activity of parliamentary committees for the supervision over the special services should not lie in control and interference in the governing of the special services, but rather in supervision over the observance of the requirements of the laws, prevention of use of special services and intelligence for the usurpation of power and the violations of human rights and freedoms, as well as the efficiency of use of resources and budget funds.

Usually the tasks of the parliamentary supervision over the special services are as follows:

- To provide the democratic legitimacy of the special service by observing the democratic norms.
- To decrease the risk of violations in the activity of the special services, since the secrecy contributes to emergence of the risks of corruption and other kinds of abuse.
- To provide the efficiency of the activity of the special services. The parliament plays an important role in assessment the activity of the special services, therefore the deputies must receive the sufficient information concerning the results of performing the tasks of the special services.

One of the key questions that emerge during the work of the parliamentary committees in the area of activity of the special services, is the access of the deputies to the secret information. A strict restriction of access to information and excessive secrecy contribute to corruption and lead to the violations of human rights, while the insufficient protection of information, especially in the conditions of the armed conflicts, creates a threat to the national security. Currently the generally accepted approach in the definition of the optimal transparency of the security and special services sector, is, in particular, the so-called "Tsvane Principles"[21]. According to these principles, the classification of information is allowed, if its disclosure creates a real and specific risk of causing a significant harm to the legal interests of the national security. Such information may include, in particular, the plans for specific intelligence operations or other details of operational activity. Other information may be a subject of review of parliamentary committees.

Despite the decisive role of the parliamentary instruments, it is important to observe the requirements concerning the complex supervision. The democratic supervision over the activity of the special services must provide for active participation of the civil society, media, as well as the representatives of the government and security sector[22]. In addition, military and civilian ombudsmen, independent from the structures of the military command, can perform a wide circle of tasks concerning the control over the observance of the principles and the best practices of performing the tasks of the special services. In particular, the Ombudsmen can assess the quality of the provision of safety of the citizens by the special services, as well as the observance of human rights and other fundamental international standards and law in the area of security and activity of the special services.

The integrated concept of integrity in the field of reform of the special services

The very concept of integrity is not something new or unfamiliar to the post-Soviet countries. At the same time, unlike the countries of established democracy, the issues of building integrity are not considered a standard element of the implementation of strategies of the reform of the security and special service sector.

In general, the integrity in the field of security and defence means the clear and mandatory, fair and full performance of the tasks. However, there is a wider interpretation of that concept, when in addition to honesty and diligence, the integrity is also a synonym of the concept of integrity which is often used in the questions of national security for assessment of the quality of the system. The integrity in this sense means that the system performs its functions, works fine and in accordance with the planned parameters. That is why integrity is considered as an important instrument of provision the effective activity of the special services.

A generally accepted algorithm of building integrity in special services looks like this:

- **Risk assessment and the plan of actions.** The first step to the development of integrity is the identification and assessment of the risks of violations of integrity and the development of a plan (strategy) for overcoming them. The instruments for assessment and planning are available for the governments and security specialists, such as NATO-DCAF Integrity Self-Assessment Process[23] and CIDS-TI Integrity Action Plan[24].

- **The forming of a full legislative basis.** An important element of building the integrity is an adequate regulatory framework which complements codes of conduct and ethics guidelines.

- **A sufficient budget planning.** It is necessary to pay attention to the system of budget planning, which should correspond to the general strategy of the national security in the medium and long-term perspective.

- **Education and training.** It is necessary to constantly pay attention to training of personnel of special services in the issue of building of integrity. There are several programs and courses on building the integrity, developed for the military and civilian staff of NATO[25], CIDS[26], Royal Military Academy[27], and other military organisations and services.

- **The control and supervision.** In order to guarantee all long-term efforts on building the integrity, it is necessary to create the supervision system. It may include the mechanisms of internal and external control that include the inspectors, control committees, auditors and ombudsmen. An important role in this process is played by the deputies of the parliament and the government. The civil society and media must have access to information and the right to control the security sector, to create the functioning system of balances and counter-balances, which would allow to avoid the corruption.

Since the provision of integrity of the special services is a difficult process, it can cover a great number of participants. On the national level the program of forming the integrity can be developed by the government with involvement of other interested parties (the parliament, ministers, committees etc.) with its subsequent fixation in the strategy of the national security. In the future, the program should be implemented by representatives of the security sector, in particular, the special services, under the supervision of the parliament, civil society and other control bodies. The national legislation should provide the basis for that process. On the international level the international organisations can provide the training, instruction and external supervision over the national processes in this sphere.

To date, clear recommendations have been developed for the creation of motivational mechanisms in the secret services for the formation of virtuous behaviour of the law-enforcement bodies and special services[28]:

01 Establishment of clear requirements to the activities in all directions: the tasks, ethical, contextual. Publication of clearly defined rules and standards; introduction and observance of the requirements of the code of conduct for all civilian and military officials.

02 Introduction of clearly defined procedures that would function efficiently, and their requirements would be strictly observed. The procedures of certification, promotion, appointment to the posts should be assessed from the point of view of diligence, integrity and objectivity, and should always be in the centre of attention of the management of the organisation.

03 Active cultivation of the new requirements and procedures among the management that should clearly understand that their aim is the improvement of quality and results of activity by using the new, more efficient work methods.

04 The creation of proper motivation for the introduction of new functional system among the management of the organisation, the efficiency of which would be important for every representative of the management.

05 The application of the information activities which will help to convey new requirements and principles to ordinary employees of the special services, officials of the special services and wide society, including the relatives of the employees of the special services.

06 The introduction of clearly defined sanctions for the violations of requirements and standards, which should adequately show the level of violations. Several cases of indicative (and completely adequate) punishments that would be widely covered in media, will be a restraining factor for the future violations.

07 The regular analysis and assessment of the achieved results with all the representatives of the process of provision of integrity of the special services.

The special report by the Council of Europe Commissioner for Human Rights[29] tells separately about the fact that the internal integrity of the special services plays a crucial role in the provision of lawfulness of their activities and observance of human rights.

The employees of the special services, and not the external controllers, are present during the taking of many decisions that have important consequences for human rights. Therefore the most important are the values, ethics and legal knowledge of the personnel of the special services. For that the heads of the special services must apply the strict criteria of checking during the selection and only recruit the people with the corresponding qualities. They should also organise a constant training, including the training on the issues of human rights and the role of the bodies of external supervision. It is important that the external oversight bodies should check this internal policy and practice of the special services. In the end, the external supervision systems will not succeed, if the special services themselves will not seek to respect the human rights and contribute to the supervision and accountability.

Conclusions and recommendations to section I

The analysis of the features of functioning and reforming of internal special services of the European countries shows that not all European countries fully adhere to international recommendations and standards.

The traditions and previous historical models, formed in some countries of the Western Europe (for example, in France) cause the preservation of certain functions of special services, which, according to the modern international standards, are considered excessive and in some cases may threaten the human rights. First of all, it concerns the powers to conduct the pre-trial investigations and the application of the coercive instruments (in particular, the searches of the private property, arrests, detention and holding in custody).

At the same time, the criticism due to the failures of the European secret services (including the French ones) in counteracting the international terrorism, forces them to gradually change the traditional approaches and switch to modern formats of activity, which, on one hand, can provide the observance of human rights, and on the other – improve the efficiency of performing the tasks by the special services. The modernization of the special services usually takes into account the international standards in this field, especially the ones concerning the observance of human rights.

The situation is specific in the neighbouring Poland, where, unlike the other successful examples of rapid reforms in the countries of the former socialist camp (in particular, Romania, Bulgaria, Czech Republic, Slovakia, Latvia and Lithuania), the process of transformation of the special services has dragged on, they were politicized and ideologized, which negatively affected the work of the special services. In other words, the preservation of the pre-trial investigation, investigation of criminal and economical offenses or the anti-corruption actions in the functionality of the internal special services of Poland ABW, did not increase its efficiency, on the contrary, it caused the decrease of the results of work of ABW. It could be said that the example of Poland is a failed model of transformation and it should be viewed in Ukraine as a negative experience which must not be repeated while reforming the SSU.

Essentially, the analysis of the experience of the reforms and transformation of the internal special services (both the Western Europe and post-socialist camp) at the same time evidences that adhering to the international recommendations and standards positively affects the ability to perform the tasks from the point of vies of counteracting the threats to the national security, and provides the necessary level of observance of human rights.

Based on the feature analysis of the reforms of internal secret services of European countries, it is considered expedient to ensure the fastest possible transformation of the SSU into an organisation that will be focused on counteracting the threats to the national security on the territory of Ukraine (terrorism; foreign intelligence services; intents and actions that undermine the democratic foundations, sovereignty and territorial integrity of Ukraine – including, most of all, due to aggression of RF), and not duplicating the law-enforcement or anti-corruption bodies.

Moreover, the rapid modernization of SSU according to the international standards and European experience focuses the reformed special service on counteracting the threats that arise as a result of aggressive actions of Russia against Ukraine, and it will not disperse the SSU's efforts to perform unusual tasks.

Taking into account the European experience, it is necessary to pay a particular attention to the creation of a complex system of supervision over the activity of the special services in Ukraine while reforming the SSU. The complex nature of such system should be achieved by forming the internal, executive, parliamentary, judiciary and specialized supervisory institutions. A particularly important role is played by the institute of the special ombudsmen, which would constantly supervise the observance of principles and the best practices of performing the tasks by the special services.

Also, based on the best European practices of activity of the special services, while reforming the SSU it is necessary to pay attention to integrity as an important instrument of provision of efficient activity of the special services. The internal integrity of the special services plays a crucial role in provision of lawfulness of their activity and observance of human rights. The fact that the employees of the special services, and not the external controllers, adopt specific decisions and implement them in practice, makes the values, ethics and professionalism of the staff of the special services a crucial element of efficient and lawful activity of the special services. Given that, the integrity can be one of effective components of the universal system of control and supervision over the special services, including the SSU.

Thus, while reforming the SSU it is necessary to be guided by the recommended international standards, which in concentrated form can be provided as follows:

- Organisation of internal special services should not be built on the military foundations (in other words, the demilitarization should take place);
- The internal special services should not perform the law-enforcement functions (in particular, conduct the criminal investigations);
- The internal special services should not investigate the crimes, arrest or detain persons, or apply other coercive measures.
- The internal special services should not deal with economic problems of the country or fight the organised crime;
- The internal special services should not be used as an instrument of pressure on the political parties, national minorities, religious groups or other groups of population;
- The efficient democratic supervision over the internal special services, both a priori and post factum, by all three branches of power is particularly important for the protection of human rights and fundamental freedoms.

02

OBSERVANCE OF HUMAN RIGHTS IN THE ACTIVITY OF THE SECURITY SERVICE OF UKRAINE

02

01

LAW-ENFORCEMENT ACTIVITIES OF THE SSU

Detentions, arrests and holding in custody

In 2014-2019 the changes were adopted in the legislative process of Ukraine related to the armed conflict with RF and aimed at worsening the situation of detainees and remand prisoners, those changes significantly violate the international standards of human rights.

Thus, on 12 August 2014 Article 615 was added to CCP, which enshrines that *"Within the territory (administrative area) where martial law or an emergency is in effect or a counter-terrorist operation, conducted, where an investigating judge is not able to exercise his powers within the time provided for by Articles 163, 164, 234, 247, and 248 of this Code as well as the powers as to imposing the measure of restraint in the form of 30 days of custody on persons who are suspected of having committed any of the offenses under Articles 109–1141 , 258–2585 , 260–2631 , 294, 348, 349, 377-379, and 437-444 of the Criminal Code of Ukraine, such powers are exercised by a respective public prosecutor".*

This norm is a direct violation of §3 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms and §3 of Article 9 of the International Covenant on Civil and Political Rights, according to which each person arrested or detained for the criminal accusation is urgently sent to a judge or another official who by law has the right to exercise judicial power, and has the right to trial within reasonable time or to be released.

Moreover, on 12 August 2014 the Law of Ukraine "On the Fight Against Terrorism" was supplemented by the Article 15-1, which enshrines the possibility to conduct the preventive detention of the persons suspected of the terrorist activity, for the term of up to 30 days, after a motivated decision of the Head of the Main Department of SSU or the head of a territorial body of the National Police with the consent of a prosecutor and without the ruling of investigating judge or a court. That Article also provides the obligation of the detaining body, in case of detention for more than 72 hours, to immediately send a copy of the decision on the preventive detention of the person to the investigating judge or a court of the relevant jurisdiction, with a petition for selection of an appropriate preventive measure concerning that person. However, the Article does not contain clear explanations, from what moment should such "immediacy" be counted: from the moment of the physical detention or after 72 hours since the moment of detention, and that creates the conditions for the abuse by the detaining persons.

Also, the Article does not enshrine the duty of the investigating judge to conduct the immediate review of the lawfulness of such detention at once after receiving a copy of such decision.

As a result, the investigating judge is not obliged to review the lawfulness of such deprivation of liberty within 30 days, which does not correspond to the principle of "immediacy" of the review, enshrined in the above-mentioned international treaties on human rights.

The introduced additions essentially enshrined the right of the pre-trial investigation bodies to deprive the persons of their liberty based only on their own beliefs concerning the presence of the justified suspicion of committing a crime. At the same time, Article 194 of the CCP, which was adopted in order to fulfil Ukraine's international human rights obligations, enshrines that the issue of presence of the justified suspicion of committing a criminal offense by a suspect or an accused, is solved by an investigating judge or a court during the examination of a petition for a preventive measure.

Also, despite the fact that such detention can be equal in its duration to being in custody, neither CCP nor the Law of Ukraine "On pre-trial detention" contain any provisions that would regulate the procedure of such detention, as well as the rights of the detained persons.

Instead, the procedure of preventive detention is only regulated by the Instruction for the procedure of preventive detention of persons involved in the terrorist activity in the area of anti-terrorist operation, and a special regime of pre-trial investigation in conditions of martial law, state of emergency or in the area of anti-terrorist operation, adopted by the Order of the Ministry of Internal Affairs of Ukraine, the Prosecutor General's Office of Ukraine and SSU No. 872/88/537 of 26 August 2014.

It could be seen from this, that the only document that regulates the deprivation of liberty of the persons during a lengthy period is a by-law, adopted by the subjects of the exercise of such powers.

Among other negative changes in the legislation of Ukraine it is possible to name the fact that on 07.10.2014 Article 176 of the CCP was supplemented by part 5, which excludes the possibility to apply the alternative non-custodial preventive measures to the persons suspected or accused of crimes provided in the Articles 109-114-1, 258-258-5, 260, 261 of the Criminal Code of Ukraine.

That norm was in force despite the fact that ECtHR, the jurisdiction of which is recognized in Ukraine, and the case-law of which is a part of the national legislation, found the violations of Article 5 of ECHR in cases when the national legislation did not provide for the use of alternative preventive measures (Letellier v. France, decision of 26 June 2001 §§ 35-53; Clooth v. Belgium, decision of 12 December 2001, § 44).

On 25 June 2019 the Constitutional Court of Ukraine found the provision of pt. 5 of Article 176 of the CCP to be in breach of the Constitution (Decision No. 7-p/2019 of 25.06.2019).

The above-mentioned changes to the legislation were often criticized by the human rights organisations, because they essentially undermine many years of efforts directed at positive changes concerning the observance of rights and freedoms in Ukraine, and bringing its legislation in line with international standards.

On 21 May 2015 the VRU adopted the Ruling "On the Statement of the Verkhovna Rada of Ukraine "On Ukraine's waiver of certain obligations set out in the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms" No.462-VIII, which also provides the waiver of the obligations under Article 5 of the Convention and Article 9 of the Covenant.

However, the Constitution of Ukraine in Article 64 directly enshrines that the rights and liberties set in the Article 29 of the Constitutions cannot be restricted.

At the same time, Article 29 contains the provisions, according to which nobody can be arrested or held in custody, unless there is a motivated decision of a court, and only on the grounds and in the order provided by the law.

In case of an urgent need to prevent a crime or stop it, the bodies authorized by the law can hold person in custody as an interim preventive measure, the validity of which must be verified by a court within seventy-two hours. The detained person is released immediately if within seventy two hours from the moment of detention he or she is not handed the motivated court decision on remand imprisonment.

Meaning that while adopting the above-mentioned changes to the legislation the norms of the Constitution, which is the basis for all other laws and by-laws, were completely ignored.

From the petitions that were sent to the human rights organisations and the VRU Commissioner for Human Rights it can be seen that the employees of SSU started widely using the practice of detention of persons without the consent of an investigating judge exactly in cases not provided for in Article 208 of the CCP of Ukraine. For example, the persons mentioned in the appeals and those who were detained without the decision of the investigating judge, were suspected of crimes that were committed by them several months, or even several years before they were detained. In other words, according to the current CCP of Ukraine, in such cases the detention of the persons should have been carried out in the general procedure, meaning with the previous consent of the investigating judge, and not in the procedure provided by the Article 208 of the CCP of Ukraine. The detention of persons suspected of committing a crime, without the registration of such detention, holding them in custody under a fictitious pretext during ATO became the actual standard for the subdivisions of SSU. Among the cases in connection with which people turned to the Kharkiv Human Rights Protection Group for legal assistance, there was not a single case when a detained person was not subjected to unlawful detention or kidnapping connected with violation of all procedural rights of the detainee before the official registration of the detention, with tortures.

The violations of the right to legal aid, guaranteed by Article 59 of the Constitution and regulated by Article 213 of the CCP, by SSU officers, are systematic and widespread. According to pt. 4 of the latter Article, the detaining official has to immediately inform the agency (institution) authorized by the Law to provide a free legal assistance, about the detention. In the best case the notification is delayed. If a lawyer from an institution other than the Centre of Free Legal Aid was invited for the provision of legal aid, he or she will not be admitted to the detained person, and the lawyers of KHPG constantly face that.

Detention by the SSU to exchange prisoners of war and civilian hostages held in the self-proclaimed DPR and LPR is completely illegal. Information about the exchange is scanty and fragmentary. It takes place in the conditions of secrecy, not regulated by any legal procedures. Such picture can be compiled from the applications and statements of the relatives of the persons who are to be exchanged and who were exchanged and agree to provide information about that.

SSU forms the so-called “exchange fund” (a disgusting term!): it searches for people involved in crimes related to separatism, high treason, terrorism and other crimes in the jurisdiction of SSU, detains them and offers the exchange for the prisoners in LPR and DPR instead of criminal prosecution and high terms of punishment. The detained persons do not have a choice, and they agree to the exchange.

Then the agreement with the investigation is made, the criminal proceedings are closed, the persons are released from custody, but they are awaited by the representatives of the SSU, they are put in a car and brought to unidentified location, where they remain until the exchange, without communication with the outside world.

Sometimes SSU suggests exchange after the investigation during the trial. In such cases the judge makes a decision, without finishing the trial – several years with suspension of the punishment, the person is released in the courthouse, and they are similarly brought by the representatives of SSU to unidentified location, where they are held incommunicado. There were cases when the persons were detained for the exchange after the trial was finished and the sentence was delivered (most often such cases did not involve the imprisonment). They say that it is impossible to refuse such proposition.

Note that the guilt of those who are exchanged is often not proven by the investigation and is not established by the court. In the cases that we are aware of, often the suspicion is questionable or groundless.

It should also be recalled that the former Head of the Main Investigating Department of the SSU, Vasyl Vovk, directly admitted[30] in the interview the existence of the practice of forming the "exchange fund", but, according to him, the citizens go there on their own free will: *"At their request, we place them in a transit point for exchange"*. It is hard to believe in such good will.

Since usually one our prisoner is exchanged for 2 or 3, or even more "separatists" or "terrorists", and, according to the official data, 3224 prisoners were freed in such way[31], we are talking about 6-8 thousand people who found themselves in the so-called DPR or LPR as a result of the exchange. It is difficult to say what happened to them afterwards. The vast majority of them had a permanent place of residence on the controlled territory, meaning that they do not have homes or jobs at their new place of residence. They do not risk returning, because they are afraid being persecuted or exchanged again (they say that there were cases when the same person was exchanged twice).

Let us recall that in June 2015 Ukraine joined the International Convention on the Protection of All Persons from Enforced Disappearances, and undertook to adhere to all its norms. Under Article 2 of that Convention "enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law". Under the international law, an enforced disappearance is a crime, and in certain circumstances – even a crime against humanity. We have to state that the Security Service of Ukraine has been carrying out the enforced disappearances for a long time already. It is also appropriate to provide such quote from the Convention: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance" (pt. 2 of Art. 1).

It is unknown where the people arrested during the investigation by the Security Service remain before the termination of the criminal proceedings or a court sentence and after the next detention with the aim of the exchange.

Two officially known sectors of provision of investigation in Kyiv and Kharkiv obviously cannot accommodate such a number of people. At the stage of the investigation some of the arrested persons could remain in SIZO, but the official statistics of the State Criminal-Executive service does not show a significant increase in persons held in SIZO. Therefore, the question of where the SSU held the citizens of Ukraine during the investigation and pending the exchange for the prisoners, remains without a clear and exhaustive answer. Individual statements and reports of international organisations indicate the cells in the departments of SSU in the eastern cities of Ukraine.

At the same time, SSU in its official replies to the queries denies the existence of unofficial places of detention, as well as the use of illegal detentions and tortures against the detained. Thus, it is not surprising that SSU in its reply to our query notified us that none of the SSU officers was disciplined or accused of unlawful detention of people in the unofficial places of detention.

The information about the secret prisons of SSU appeared for the first time in the 13th report of the mission of the UN High Commissioner for Human Rights in Ukraine "Report on the human rights situation in Ukraine 16 November 2015 – 15 February 2016"[32]. Such information appeared in most of subsequent Reports of the Mission.

On 26 May 2016 the delegation of the UN Subcommittee on Prevention of Torture had to terminate its visit to Ukraine after SSU denied them visits to places, which, in UN's opinion, hold the people, who were deprived of their freedom by SSU, in particular – the visit to Kharkiv region department of SSU[33]. The Head of the delegation, Malcolm Evans, referring to the places of detention of SSU, stressed that the group of monitors had been denied a visit to *"the places, in which, according to numerous reports, the people were detained unlawfully, and the "detained" were tortured and ill-treated"*[34]: *"From the materials of the human rights organisations that documented the statements of the victims it is known that there were cases where the persons who were unlawfully detained at the time of the visit of the monitor missions were transferred to other premises. In addition, it is outrageous that the SSU has not yet publicly acknowledged the problem with places of illegal detention, despite the dozens of cases, documented by UN Monitoring Mission in Ukraine, Amnesty International and Human Rights Watch"*[35]. The visit was continued in September, the delegation was shown the above-mentioned sectors of provision of investigation, but that does not answer the question about the location of the detained persons.

On 3 June 2016 a British newspaper "Times" and UN Assistant Secretary-General for Human Rights Ivan Shymonovych stated that the SSU is detaining people en masse and systematically uses torture to them[36]. The information about the unlawful detentions, tortures and holding people in illegal detention centres by SSU was also supplemented by the 14th report of the UN mission on human rights in Ukraine[37]. The mission reported that as of March 2016 it knew the names of 15 men and one woman held in Kharkiv region department of SSU.

The list of 26 persons secretly held is custody was handed to Ukrainian state authorities by the human rights activists from Human Rights Watch and Amnesty International, and most of the people from the list were released within two weeks. Those international organisations often reported the illegal detention of people in the secret prisons of SSU[38].

The examples of enforced disappearances and detention are provided in the 16th report[39] of the mission of the Office of the United Nations High Commissioner for Human Rights on human rights in Ukraine for the period between 16 August and 15 November 2016 (paras. 33, 34, 35). It concerns the detention of persons kidnapped after the court decision about their release, in Mariupol and Kharkiv region departments of SSU and private apartments.

On 29 July 2016 a deputy of the town council of Kostyantynivka in Donetsk region, Kostyantyn Bezkorovayny, talked about the tortures and beatings in the "secret prisons of SSU"[40].

On 15 March 2018 the journalists of the "Gromadske" edition published an investigation into the existence of "secret SSU prisons", where they found signs of life and a new repair in the SSU detention centre in Kharkov, which has not functioned since Soviet times[41].

As for the illegal holding in the secret places of the restriction of liberty and the tortures of Bezobrazov V. O., Ashykhmin V. O., Vakaruuk M. M. in Kharkiv Department of SSU in 2016, the existence of criminal proceedings and their results are unknown because PGO does not believe such information to be public information.

The secrecy of the process of exchange and the absence of public control over it can have a result in the form of spread of false information about this process, which will be impossible to refute due to its secrecy.

We understand that the SSU has to conduct exchange for the release of the prisoners, but we cannot justify that procedure in any way. Everything happening with the exchange of prisoners is completely beyond the law, it is a disgusting mechanism of pressure and political bargaining by the leadership of the Russian Federation. The use of the fate of prisoners for political purposes can be described as hostage-taking, which, under the international humanitarian law is a war crime.

We have to state that the SSU continues insisting on the lawfulness of its actions. In 2019 Kharkiv Human Rights Protection Group received from SSU the reply that stated that specially designed place for the temporary detention is the temporary detention facility of the SSU, located in Kyiv city, access to it was always open for the representatives of various monitoring organisations and it was visited by numerous monitoring bodies:

- **UN Human Rights Monitoring Mission in Ukraine** – 16.06.2017, 29.12.2017, 25.04.2018, 05.06.2018, 15.01.2019;
- **CPT** – 09.09.2014, 29.11.2016, 10.12.2017;
- **International Committee of the Red Cross** – 11.05.2016, 12.05.2016, 09.03.2017, 21-23.03.2017, 07.03.2018, 20.03.2018, 19-20.04.2018, 03.07.2018, 31.08.2018, 03.09.2018, 03-04.10.2018, 07-08.11.2018, 18-19.12.2018, 04-06.02.2019, 09-10.04.2019, 08.05.2019.
- **OSCE in Ukraine** – 30.07.2017.
- **European Parliament** – 25.04.2018.

- **Commissioner** – 03.08.2012, 17.08.2015, 21.09.2015, 06.11.2015, 06.06.2016, 29.07.2016, 04.08.2016, 13.07.2018.

- **Secretariat of the Commissioner** – 20.03.2014, 21.01.2016, 29.02.2016, 26.04.2016, 25.02.2017, 11.08.2017, 16.11.2017, 23.11.2017, 15.02.2018, 27.02.2018, 24.03.2018, 04.04.2018, 08.05.2018, 05.06.2018, 26.07.2018, 09.08.2018, 27.12.2018, 18.02.2019, 20.03.2019, 29.03.2019, 25.04.2019.

Contrary to the statements of the SSU, according to the information provided in the reports of the international human rights organisations and media, during the last years the institutions of SSU systematically obstructed the free access of the monitoring organisations to the facilities of SSU[43], several cases are documented when they were denied access.

In July 2019 the Head of the UN Monitoring Mission in Ukraine stated that SSU still refused to admit that it was holding people in unlawful prisons . She also stated that *"...Currently we have detected 51 such places of detention. Kharkiv SSU is the most well-known place, but there were several others on the territory controlled by the government"*[44].

HRMMU states that in November 2019 – February 2020 the representatives of the mission enjoyed the unobstructed access to the places of detention. However, the new cases of unlawful arrests and detention of persons in unauthorized places of detention continue to be fixed by the monitors, it is referenced in the 29th Report of the HRMMU[45].

It should be noted that SSU tried to legalize its illegal places of detention in the draft law No. 6521 of 26 May 2017 "On amending the Laws of Ukraine "On pre-trial detention" and "On the Security Service of Ukraine" concerning the functioning of the old detention centres. But the authority charged with investigating the crimes cannot hold the suspects in custody for more than 3 days, and if the investigating judge chooses the preventive measure in the form of detention, it must be provided by another state authority. Combining the functions of investigation and detention in one law enforcement agency means the return to the Soviet punitive special services (for more details see the analysis of the Draft Law on the site of Kharkiv Human Rights Protection Group[46]). Draft Law No. 6521 was rejected.

Tortures and other kinds of ill-treatment

In SSU detainees and remand prisoners are tortured with the aim of making them admit committing the crimes and cooperate with the investigation. Before, in the independent Ukraine we had almost never observed such phenomena in the work of SSU (a known case of torture of Yuriy Mozola to the death in pre-trial detention centre of Lviv SSU in 1996). In 2014-2016 there were many complaints to the human rights organisations about tortures in SSU. The tortures in SSU were also numerously reported by the Parliamentary Commissioner on Human Rights, Valeriya Lutkovska. The annual report of the Commissioner for 2017 states that the number of complaints about tortures in SSU is the highest – **39%** of the total number of complaints about tortures. SSU was a subject of violation of human rights in ATO area in **49%** applications to the Commissioner in 2015 – concerning the enforced disappearances, unlawful detentions and kidnappings, tortures, violations of the right to legal assistance, imprisonment in inhuman conditions in the places unsuitable for this[47].

For example, on 8 August 2017 a representative of the Ombudsman met Mr. G., who was accused of aiding and abetting terrorist activities under Art.258-3 of the Criminal Code, in Mariupol pre-trial detention centre, and obtained the documentary proofs of him being tortured by the representatives of the SSU. The prosecutor's office of Donetsk region started the pre-trial investigation after the fact of use of unauthorized investigation methods by the officers of the Department of SSU of Donetsk region against G. on 03.08.2017. After sending the relevant act of response by the Commissioner to the prosecutor of Donetsk region G. was recognized as a victim in the criminal proceedings on 23.10.2017 and he was questioned as a victim. On 25.10.2017 Orjonikidze District Court of Mariupol found G. not guilty of committing a crime incriminated to him[48]. After the delivery of the sentence the representatives of the SSU again tried to kidnap Mr. G. from the place of his constant residence (for more detail see example 1 below).

However, the cases of investigation of tortures performed by the staff of SSU are rare. Usually, the victims of the tortures, fearing the repercussions for themselves and for the safety of their family, do not agree to testify about the circumstances of detention and subsequent ill-treatment. Moreover, they do not risk initiating an investigation into these crimes.

The SSU denies all allegations of torture and ill-treatment, using the rhetoric "criminals state about tortures to avoid the responsibility for the crimes they committed"[49].

However, the international organisations often reported that they received the information about tortures committed by the representatives of SSU. Thus, Subcommittee for the Prevention of Tortures (SPT) of the UN Committee Against Tortures and Ill-treatment in its report on the results of visit to Ukraine in 2016 stated the following: *"SPT received numerous and serious statements about the actions that, if proven, can be qualified as torture and ill-treatment. Persons interviewed by representatives of the Subcommittee in different parts of the country stated about the beatings, electrocutions, staging of execution, strangulation, intimidation and threats of sexual harassment towards them and their relatives. Given the completed work and experience obtained during the visit, the Subcommittee concludes that such statements can be truthful. In many cases those actions, according to the applicants, are used when the persons are under the control of SSU or during the unofficial detentions.*

The detained persons who were accused of crimes related to the armed conflict in the east of Ukraine ("the conflict-related detainees"), namely the crimes under Articles 109-115, 258, 260-261 and 437-438 of the Criminal Code, reported that they were tortured with the aim of obtaining the information about their participation or participation of their colleagues in "separatist" activity or to determine the military positions of armed groups. The Subcommittee also understands that in some cases the actions were committed by private persons or voluntary battalions, but with knowledge or tacit consent of the state officials".

HRMMU constantly reports the torture of the detainees in its periodic reports. Let us provide some examples.

«**44**. *...On 14 November, a Donetsk resident died on the premises of Izium district police department (Kharkiv region), shortly after being taken out and then returned by masked men and an identified SSU official. Forensic examination found multiple and extensive hematomas on his body and a closed blunt injury of the chest. On 10 November, the HRMMU interviewed a man who was arbitrarily detained by the SSU and kept incommunicado for two months in the SSU building in Kharkiv....*

69. *The overall concern with the administration of justice relates to violations of fair trial standards. The HRMMU has evidence of ill-treatment, with allegations at times amounting to torture of people arrested by the SSU and MoIA in trying to secure forced confessions*[50].

«**38.** *In December 2014, the HRMU interviewed a man who was unofficially detained by unidentified Ukrainian servicemen and allegedly severely beaten for several days. Another detainee claimed to have been beaten by SSU officers and kept in incommunicado detention where he met detainees who had been beaten and subjected to mock executions. A freelance journalist claimed that during his detention and SSU interrogation, masked men forcibly raised his handcuffed arms behind his back and hung him in that position urging him to confess to working for the Russian secret services. Several other detainees interviewed by the HRMU alleged incommunicado detention and ill-treatment that may amount to torture*[51].

"**46.** *On 9 April, the HRMMU interviewed a resident of a Government-controlled town in Donetsk region who claimed to have been kidnapped in October 2014 by a man in civilian clothes who put a bag over his head, handcuffed him and placed him in a vehicle. Then he was held in detention in a basement. For three days, he was reportedly beaten and electrocuted by masked assailants. He was forced under torture to sign a confession stating he had been "transferring intelligence information" to the 'Donetsk people's republic'. Then the man was taken to another basement, which he later discovered as located in Poltava. There, an SSU investigator, in the presence of witnesses, compiled a protocol about his detention "as a person who was caught while committing the crime". Two days after, a Poltava court 12 decided to place him under house arrest. In February, the investigator tried to force him to enter a plea bargain, which he refused to do. In the beginning of April, while meeting with the investigator, he was given a mobile phone and recognized the voice of one of the individuals who had tortured him in October. The man said that if he would not sign a plea bargain, they would meet again. Later, the interlocutor informed the HRMMU that he had signed the plea agreement*[52].

"**49.** *HRMMU continued to observe a persistent pattern of arbitrary and incommunicado detention by the Ukrainian law enforcement (mainly by the Security Service of Ukraine).*

These cases were often accompanied by torture and ill-treatment, and violations of procedural rights"[53].

*"**43.** HRMMU consistently documents reports throughout the country of recurrent allegations of ill-treatment during arrest and the first hour interrogations that are led by SSU. A man, detained by SSU on suspicion of preparing a terrorist act in Zaporizhzhia, claimed to have been repeatedly and heavily beaten, including in the SSU building.*

...

***48.** A woman who was detained by SSU on suspicion of preparing a terrorist act claims that during her interrogation, she was hung by her hands handcuffed in the back until her elbow joints were torn apart. About 20 times, a gas mask was reportedly put on her head, with the inhaler closed*[54].

*"**47.** During the reporting period, OHCHR continued to receive allegations which match the previously documented pattern of use of torture to extract confessions from persons suspected of being members of or otherwise affiliated with armed groups. Also, in a few cases, Ukrainian servicemen detained on suspicion of committing criminal offences were subjected to torture until they provided self-incriminating testimonies. It is deeply concerning that investigations into allegations of torture are rarely opened and when so, have been ineffective. Defence lawyers also rarely raise allegations of torture, either due to intimidation or as a strategy to reduce the sentence.*

***48.** For example, in August 2015, in two separate episodes, SSU arrested two residents of Kharkiv region accused of being supporters of the 'Donetsk people's republic' and 'Luhansk people's republic' and planning to carry out subversive activities. Both victims were transported to the regional SSU department, where they were tortured (beaten, hands twisted behind the back, subjected to mock execution, and threats of violence against their families) until they signed self-incriminating statements. Although they were taken to hospital, SSU officers instructed doctors not to record any injuries. One of the victims begged a lawyer not to raise allegations of torture in court, fearing reprisals. The victim told the doctors in the pre-trial detention facility (SIZO) that he was injured falling from a tree. Both victims remain in detention, with trials ongoing.*

***49.** In another case, on 16 June 2016, a victim was physically attacked next to his apartment building by two men wearing balaclavas. The victim ran out into the street, where two other individuals hit him on the head, strangled him, and kicked his head when he fell on the ground. He was handcuffed, dragged into a van, and driven 30-40 minutes away. When the van stopped, an SSU official of the Kharkiv regional department questioned him about his acquaintances who joined the armed groups of the 'Donetsk people's republic'. Unsatisfied with the victim's reply, SSU officers strangled, kicked and punched him while threatening his family. When the victim agreed to cooperate, the SSU officers explained that he would be taken to the Ukrainian-Russian border and detained for "smuggling weapons". At the border, one officer stabbed the victim's heel so he would not be able to escape. Afterwards, the victim was taken to the Kharkiv SSU building and forced to memorize a written statement. His "confession" was video recorded. The victim is currently on trial for "terrorism" and "trespass against territorial integrity of Ukraine". While the Military Prosecutor for Kharkiv Garrison is investigating the allegations of torture, no notifications of suspicions or indictments have been issued.*

50. *In another case, a man was detained in his home in Nyzhnioteple in November 2016 by members of the UAF. They searched him at gun point, beat him causing lasting pain, and subjected him to suffocation and electroshocks. They forced him to make a video confession that he provided information on Ukrainian military positions to armed groups. Then he was taken to the Sievierodonetsk SSU building where he was interrogated without a lawyer and forced to sign papers in order to receive medical care. Afterwards, he was taken to the hospital but threatened by SSU officers not to complain of any ill-treatment. He is accused of being a spotter for armed groups and is currently on trial.*

51. *HRMM also followed cases of Ukrainian servicemen who reported being subjected to torture while detained on criminal charges. On 30 October 2014, a serviceman of the Kirovohrad volunteer battalion together with five fellow soldiers was detained by a group of 20 armed men. The victim was held incommunicado in solitary confinement for three days in the basement of the SSU regional department building in Kramatorsk. He was tortured several times a night in order to extract information about his commanders. The victim was beaten, including with truncheons, and hung from bars while being hit and subjected to electroshocks. On the third night, the perpetrators cuffed the victim's hands behind his back, put duct tape tightly over his eyes and mouth causing pain, pushed him to the floor and kicked him. The victim lost consciousness and choked on his own blood. The beating continued until the victim confirmed that he was ready to "confess". He was told what to say in court and forced to sign documents. The SSU officers who took him to the court threatened that if he asked for a lawyer or complained, his "therapy" in the basement would continue. In the presence of two masked, armed SSU officers, the judge ordered his pre-trial detention for 60 days, without announcing any charges. The victim's injuries were later documented at hospital and in the SIZO. Despite his written complaints about the incommunicado detention and torture, as well as two court orders for the Office of the General Prosecutor to conduct a forensic expertise of his injuries and investigate the circumstances of his arrest, there has been no progress in investigation."* [55]

27 December 2017 a simultaneous release took place: 233 individuals were released by the Government of Ukraine and 74 individuals were released by armed groups. As indicated in paragraph 10 of the Annex II to the 21st HRMM report, *"Of the 234 individuals released by the Government, OHCHR had already been monitoring 142 cases prior to the simultaneous release, having interviewed individuals while in detention facilities in government-controlled territory and observed related court hearings. After the simultaneous release, OHCHR undertook further interviews, and as of 15 February 2018, it had interviewed 64 of the released individuals, on both sides of the contact line. All described having been subjected to torture or ill-treatment, sexual violence, threats of violence, inhumane conditions of detention and/or violations of fair trial guarantees."* [56]

In 2018-2020 SSU continued practicing the kidnappings, illegal detentions and tortures, although on a lesser scale than in 2014-2017. Here are relevant examples from some reports of HRMMU.

"**47.** *... OHCHR also documented six cases, where the potential or actual members of armed groups were detained by AFU or Security Service of Ukraine (SSU) and held in unofficial places of detention, while their detention was not properly documented. Four of those persons stated that they were subjected to tortures, ill-treatment, sexual harassment and (or) threats of physical violence.*

48. *OHCHR documented a new case of arbitrary detention and ill-treatment that allegedly happened in an unofficial place of detention, located in Krasnoarmiysk MTE (Motor transport enterprise). On 16 June 2018 armed men wearing military uniform and masks stormed the building, where was a Russian national (previously detained and released on 18 May 2018). They told him that he would be "exchanged" to the Russian Federation, bound his eyes and brought him to Krasnoarmiysk MTE, where he allegedly spent two days, handcuffed to a metal bed. On 18 June the employees of SSU offered him two options: either he returns in custody to SIZO, or he "disappears". He was brought to a court hearing during which he agreed to be taken in custody, due to fear".* [57]

«**48.** *During the reporting period OHCHR documented the cases where the persons were detained by Security Service of Ukraine (SSU) and accused of funding the terrorism for owning the business and (or) paying the "taxes" on the territory controlled by "Donetsk People's Republic" and "Luhansk People's Republic". OHCHR is concerned by the fact that such practice can continue and the number of people detained on such accusations, may increase".* [58]

"**47.** *On the territory controlled by the Government, OHCHR continued to receive the reports that the SSU arbitrarily detains, tortures, intimidates and ill-treats the persons, in particular, in unofficial places of detention, seeking to receive the information, force them to confess or cooperate. For example, on 17 April 2019 on "Maryinka" checkpoint, allegedly, two officers of SSU in civilian clothes detained a man. They brought him to a metal container on the checkpoint, where they were holding him for around two hours. On the same day two men brought him and his wife to Kurakhove. They left his wife in the hotel, put a bag on his head and brought him to an unknown place, where he was allegedly beaten. Several hours later they returned the man to the hotel with a noticeable bruise on his face. After that incident the man's health deteriorated, and he was hospitalized. His wife complained to the police about the incident on the checkpoint. On 23 April 2019 two SSU officers visited her in the hospital and forced her to revoke her application.*

48. *OHCHR monitored the case of a foreign person who was arbitrarily arrested and subjected to tortures in December 2018, allegedly – by the officers of SSU. In early February 2019 that man moved with his family to Odesa region, fearing the subsequent intimidation. On 12 February 2019 the State Bureau of Investigations (SBI) started the investigation into the victim's allegations about arbitrary arrest and tortures by the SSU*[60]*. On 15 March 2019 two persons who introduced themselves as operatives from SSU, arrived to his apartment and asked about his complaint to the SBI. They asked him to go with them to Odesa, allegedly to sign some documents. In the car those men put on the masks, seized his passport, wallet and phone. They told him that he should leave Ukraine. One of them showed the victim a live broadcast of two armed men near his house, where his wife and two children were, and said that they will enter his house, if he does not agree to leave. Then they forced him to state on camera that he leaves Ukraine on his own free will and that he was not subjected to physical or mental pressure. At the border crossing point between Ukraine and the Republic of Moldova, the above-mentioned persons gave him a document to sign that stated that he agreed to leave the country, and took him to the passport control point at the border. One of them threatened the victim: "If you return to Ukraine, we will kill you. If you tell about what happened to you, remember that you have got a family in Ukraine".* [61]

"**47.** *For example, OHCHR has documented a case where SSU between 7 and 12 August 2019 arbitrarily detained in unofficial places of detention a man without officially arresting him. On 7 August 2019 that man was detained by the national police on the checkpoint in Petropavlivka because his name was indicated on the "Peacekeeper" web site*[62]*. The police brought him to police departments in Petropavlivka and Sievierodonetsk, where he was registered as a visitor, questioned without a lawyer, forced to undergo a polygraph check and his confession of involvement in activity of the armed groups was recorded on video. On 8 August, in the night, two representatives of SSU brought him in an unidentified place and again questioned him without a lawyer. In the morning they brought him to Sievierodonetsk, where he was questioned again and detained for the night in a rented apartment. On 9 August the man was brought to the prosecutor's office, where he for the first time met his free lawyer, appointed to provide him legal assistance, and where he was handed the notice of suspicion under Art. 258-3 of the Criminal Code of Ukraine (creation of a terrorist group or a terrorist organisation). On the same day a judge from Sewverodonietsk Town Court scheduled a court hearing on 12 August, without delivering a decision about his detention. However, after the hearing, when his lawyer left, the representatives of SSU continued to arbitrarily hold the man in custody in a rented apartment in Sievierodonetsk, where he spent two nights. On 12 August he was brought to Lisichansk town court that decided to place him in custody for 60 days.*

48. *OHCHR continued documenting the cases that took place during the previous reporting periods and are examples of a tendency which had been already detected by OHCHR before, in particular, the cases of tortures and ill-treatment with the detainees by the SSU. On 14 April 2016 the employees of SSU arbitrarily detained a man in Kharkiv region. They handcuffed him, placed him in a van and brought in an unknown direction. In the forest five or six men in balaclavas threw him on the ground and beaten him, kicking him and jumping on him. Those men forced him to kneel and aimed a pistol at his head. During the beating the man was asked about his possible cooperation with Russian Federation and funding received from it. After that the employees of SSU searched his home and again brought him in the forest where they beat and electrocuted him, and later, putting a bag over his head, brought him to Kharkiv Department of SSU. There, before he was released, he was forced to sign the papers that he could not read. After the release he spent ten days in hospital with concussion and injuries to the back, head and arms."* [63]

"**50.** *On 30 July 2019 on the territory controlled by the Government, around 10 armed men wearing masks and camouflage without insignia, violently searched and kidnapped a man in front of his family and neighbours. They brought him to a garage, where they poured water on his face and threatened him, after that they beat him, although the perpetrators tried to not leave bruises. They tried to force him to confess of participation in armed groups, of being a Russian agent, and provide them access to his accounts in social media. After the detention for a night in the garage the man was brought back home, to give him a proper appearance under guard before taking him to the old SSU building, for him to testify before a "curator". Around 10 pm the "curator" told the man that he will be allowed to return home under "house arrest", and warned him to stay home, otherwise he would risk being subjected to further violence. For the next week the man was numerously taken to the old SSU building and questioned without a lawyer. Finally, he was instructed by the "curator" to make the same confession to the prosecutor.*

On 6 August Kramatorsk city court placed him in SIZO for 60 days on suspicion under Article 258-3 (creation of a terrorist group pr a terrorist organisation) of the Criminal Code of Ukraine. On 12 August his lawyer complained to the court about the ill-treatment. However, the criminal proceedings under Article 365 (2) (abuse of power or authority) of the Criminal Code was only registered by the State Bureau of Investigations on 21 August 2019, after the lawyer complained in the court about the inactivity of the investigator of SSU. As of November 15, the man remained under investigation in pre-trial detention centre". [64]

"**50.** *OHCHR documented a case of a man who wanted to use the program "You are awaited at home"* [65]*, designed for members of armed groups. He contacted the SSU, which assured him that he could return to Ukraine from the Russian Federation without any consequences, if he cooperates with the authorities. However, as soon as he passed "Maryinka" checkpoint on 3 October 2019, he was kidnapped by unidentified persons, allegedly because his name is indicated on "Peacekeeper" web site. He was brought to unknown place, probably not far from Mariupol, where they handcuffed him to the handrail for the entire night. He was hit in the stomach and threatened with violence until he confessed his participation in the armed groups. For the next several days he was detained in unofficial places of detention. On 8 August 2019 he was brought to Sievierodonetsk SSU department, where he was questioned without a lawyer. On 10 August Sievierodonetsk court decided to place him in custody for 60 days. On 25 October a prosecutor told him that he cannot use the SSU program and that the only possibility to be released is to sign the plea agreement with subsequent consent to the "exchange". On 4 December two employees of SSU tried to force him to agree to the participation in the simultaneous release. He refused, and on 11 December 2019, when the term of him being in custody expired, he was released. The examination of the criminal case against this man is ongoing, and he waits for the result of the examination of his complaint to SBI about his unlawful detention".* [66]

Kharkiv Human Rights Protection Group documented several cases concerning the facts of torture by the representatives of the SSU. Below are two examples.

Example 1 [67]

On 23.01.2015 six unidentified persons (as it turned out later, they were representatives of Department of SSU in Donetsk region) arrived to the house of a resident of Volnovakha district of Donetsk region, Mr. G. in Novotroitske village, in a black Ford SUV without the license plates. Threatening G. with weapons, they beat him while detaining him in front of his daughter, took money and valuables from his home, tied his arms and brought him to the police department in Volnovakha, where they placed him in the basement. The same persons were holding Mr. G. in custody for 10 days (until 2 February 2015) without procedural fixation of his detention, using brutal physical violence against him: twice a day he was beaten, including by the masked persons, in particular, he was hit with a "Yellow pages" book on the head, tortured by electric current, deprived of the possibility to breathe by placing him face-down in the water, and on 31.01.2015 they brought him outside and imitated the shooting. After the tortures Mr. G. testified about aiding and abetting the terrorist activity, which in reality he did not do, and this testimony became the basis for his conviction under Art. 258-3 of the CC of Ukraine.

Only on 02.02.2015 he was brought to SSU department in Donetsk region in Mariupol, where a report was drawn up on his detention on suspicion of committing a crime. After the questioning he was brought to the surgery department of the local hospital.

Later Mr. G. complained about the unlawful actions by the SSU officers, and the prosecutor's office of Donetsk region initiated the criminal proceedings No. 42017050000000627, in which he was given the victim status. The numerous bodily injuries inflicted on Mr. G. during his unlawful detention, including a rib fracture, are confirmed by the report of forensic examination, conducted within the criminal proceedings.

During the examination of his case by the court Mr. G. denied his involvement in the crime he was charged with, complained about the unlawful actions of the representatives of the SSU, and on 25.10.2017 Ordjonikidze district court of Mariupol found Mr. G. not guilty of the crime, and he was released from custody in the courtroom.

On 27.10.2017 Mr. G.'s neighbours told him that a car similar to the one used by SSU officers during his detention came to his house again. Fearing the revenge by the SSU officers, he was forced to leave his place of residence and move to the territory of Ukraine uncontrolled by the Government. His return to his place of residence poses a real threat to his life and health.

Example 2 [68]

On January 16, 2015, an explosion of an unknown device occurred at the checkpoint of the UAF located in Stanytsia Luhanska, Luhansk Oblast, resulting in the death of one soldier and two injured.

On 10 February 2015, a pensioner, Mykola Ruban, who lived on the territory controlled by the so-called "LPR", was detained at the roadblock in Stanitsia Luhanska in Luhansk region, by the fighters from Lviv battalion "Tornado" and a battalion of the special police patrol service "Chernihiv" headed by SSU officers. At once after the detention the man was stripped down to his underwear, he was searched, and after finding nothing, he was hit several times, the fighters took his personal belongings (jewellery and the phone), handcuffed him, took all his possessions, forcibly placed him in a jeep, put a hat over his eyes so that he could not see anything, and brought him, as it later turned out, to the butter-mills area in Stanitsia Luhanska. No procedural documents on his detention or seizure of his belongings or documents were drawn up

The elderly man was placed in the basement, where there were eight more persons. Some time later he was taken from the basement ("the pit") and in a sitting position he was beaten by unidentified men with an iron pipe on his legs and back. They demanded his confession in arranging the explosion on the roadblock, but he did not do it. After the beating the man was taken to "the pit", he lost consciousness several times. After a severe beating, he was in a painful condition and could not orient in time, therefore he could not clearly recall the sequence of actions, furthermore, in the basement he was in the darkness and could not observe the change of day and night. In addition, during his detention he developed diseases of the nervous system, as well as mental illnesses.

The witness of the old man's detention in the basement was the head of Stanitsia Luhanska village council, Mrs. Kh., who was held in the same basement with the detained man and who accidentally witnessed the ill-treatment. In the night of the same day the man was brought to Petrivka town in the same Stanitsia Luhanska district, where the district department of internal affairs was temporarily located.

In the evening of 11.02.2015 an official report was drawn up on the detention of Mr. Ruban on suspicion of arranging an explosion on the military checkpoint on 16.01.2015, the old man spent the night in the building of the district police department. On 12.02.2015 the investigator handed him a written notice of suspicion of committing a terrorist act that led to the death of a person. On the same day the investigating judge of the Novopskovsky district court of Luhansk region applied to him a preventive measure in the form of detention in Starobilsk SIZO. Despite that, after an oral instruction of the representatives of SSU the escort brought him to Sievierodonetsk ITT which was located on the ground floor of the building of the Sievierodonetsk city department of the Ministry of Internal Affairs of Ukraine in Luhansk region, for the employees of the Department of SSU in Luhansk region, which is also located in Sievierodonetsk, to be able to have unobstructed access to him and put pressure on him, which would be much more difficult if he was placed in SIZO. Bodily injuries were found on Mr. Ruban's body during the admission to ITT.

Subsequently the employees of SSU by lying (by promising to exchange him for the fighters from AFU imprisoned by IAF) forced Mr. Ruban to testify about his involvement in the terrorist activity. Only on 20 February 2015 the detainee was transferred to the legal place of his detention specified in the decision of the investigating judge – Starobilsk SIZO, where bodily injuries inflicted on the day of his detention, on 10.02.2015, were found during his admission, and the traces of which were seen 10 days after his detention.

On 22 April 2015 the acting Head of HRMMU, M. Bozhanik, reported to Ukrainian authorities about the possible violations by the representatives of the law-enforcement bodies of the rights of the criminally prosecuted persons, including Mr. M. Ruban. He was probably visited in the pre-trial detention centre by one of the representatives of the monitoring mission, but he cannot remember this event exactly.

On 8 May 2015 a representative of the VRU Commissioner on human rights in Luhansk region, Mr. V. Arkhypov, talked with Mr. Ruban in SIZO, who during their meeting told in detail about the circumstances of his beating after the detention. Mr. Arkhypov provided information on the results of communication with Mr. Ruban to the Secretariat of the VRU Commissioner for Human Rights.

On 17 May 2015 the second investigative department of prosecutor's office of the Luhansk region initiated the pre-trial investigation after the message of M. Bozhanik, in the criminal proceedings No. 4201513000000107 on the grounds of a criminal offense under Part 2 of Art. 365 of the Criminal Code of Ukraine (abuse of power or authority by a representative of a law-enforcement body, involving violence).

On 30 November 2015 the criminal proceedings No. 42015130000000107 were closed due to absence of constituent elements of a criminal offence in the actions of the employees.

Subsequently Mykola Ruban was sentenced to 15 years of imprisonment under Article 258 of the CC of Ukraine and in late 2019 he was exchanged[69].

It should be noted that it is almost impossible to achieve the investigation of unlawful actions committed by the representatives of the SSU. At present it is unlikely that the Prosecutor General's Office of Ukraine would initiate such criminal proceedings. No crimes concerning the unlawful detentions and ill-treatment by SSU officers were investigated. Furthermore, SSU denied the very fact of committing such crimes.

It seems that the Security Service of Ukraine has received carte blanche for any means of protection of territorial integrity and state sovereignty of Ukraine. We have to state that, regrettably, SSU officers brutally violate the human rights by committing the actions that are qualified as international crimes – illegal detentions, kidnappings, forced disappearances, detention in illegal places of deprivation of liberty without a court decision, tortures and other kinds of ill-treatment.

When we talk about it, our opponents object. They say that everything is lawful and rightful. We are constantly told that we are not patriotic, that our publications are used by the enemy. However, we are certain that the actual use of those old Soviet rudimentary practices that are the practices of the "Russian World", drags the country back to it, and delays our victory in this duel with Russia. Only the real free, democratic Ukraine can win this war. Remaining a paternalistic authoritarian state, we will not be able to overcome the same Russian state, much larger in all respects.

02

INVESTIGATION OF CRIMES AGAINST THE FOUNDATIONS OF THE NATIONAL SECURITY

Let us examine the observance of human rights during the SSU's investigation of crimes against the foundations of the national security and litigation – under Articles 109, 110, 111, 112, 113, 114, 114-1 of the Criminal Code (CC) of Ukraine – in 2014-2019. Since there were not many criminal proceedings under Articles 112, 113, 114, 114-1 of the CC of Ukraine, we will limit ourselves with the examination of crimes qualified under Articles 109, 110, 111.

The application practice of Article 109 of the Criminal Code of Ukraine

Let us recall Article 109 of the Criminal Code (CC) of Ukraine:

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

01 *Actions aimed at forceful change or overthrow of the constitutional order or take-over of government, and also a conspiracy to commit any such actions, - shall be punishable by imprisonment for a term of five to ten years with or without the forfeiture of property.*

02 *Public appeals to violent change or overthrow of the constitutional order of take-over of government, and also dissemination of materials with any appeals to commit any such actions, - shall be punishable by restraint of liberty for a term up to three years, or imprisonment for the same term with or without the forfeiture of property.*

03 *Any such actions, as provided for by paragraph 2 of this Article, if committed by a member of public authorities or repeated by any person, or committed by an organised group, or by means of mass media, - shall be punishable by restraint of liberty for a term up to five years, or imprisonment for the same term with or without the forfeiture of property.*

Article 109

The summarized data concerning the investigation of crimes qualified under Article 109 are taken from the site of the Prosecutor General's Office, and concerning the judgments under that Article – from the Unified Register of Court Decisions. They are compiled in the table.

Article 109 of the CC of Ukraine	2014	2015	2016	2017	2018	2019	Total
Criminal proceedings recorded	62	40	44	48	59	29	282
Suspicions of crime handed	31	17	10	26	17	9	110
Number of proceedings directed to court with a bill of indictment	13	13	7	21	12	8	74
Number of closed proceedings	15	4	2	1	5	5	32
Number of proceedings concerning which the decision to terminate or suspend them was not taken by the end of the year	32	23	35	25	45	21	
The number of court decisions delivered	14	24	10	9	8	5	70

The people were prosecuted under that article for the appeals and actions in support of Novorossia or aimed at creation of the "people's republics" – Kherson, Odesa, Kharkiv, Kyiv, Kirovograd etc, in support of "DPR" and "LPR", as well as against the current government. Thus, for example, in four cases in Kherson the sentences are the same, each of them states that around late summer – early autumn 2014, a group of armed representatives of "DPR" was to arrive to Kherson to overthrow the government in the region, under the guise of a mass protest event. It was assumed that the defendants were to provide various support for the "guests". All four residents of Kherson distributed the leaflets of anti-Ukrainian contents and "Novorossia" newspaper, drew mottos on the walls of the buildings, posted anti-Ukrainian texts in social networks. They all spent between 2 and 6 months in SIZO, pleaded guilty, signed agreements with the investigation and were released in the courtroom according to the sentences with probation.

The texts, mottos, photos and videos were most often distributed in such social networks as "Odnoklassniki", "Vkontakte", "Facebook". It did not prevent the opening of criminal proceedings under part 3 of Article 109, which concerns the media. The statements were often quite harsh, here are the relevant examples (translated from Russian).

"Everyone has to fight for their rights in the Ukrainian society, and the use of weapons is necessary... The new Ukrainian power and all organisations that led this power to the trough should be totally liquidated by violent means, and not just banned,... Several groups are already organised and armed for the liquidation of Turchinov as well as the heads of law-enforcement agencies of Ukraine. I was convinced of the existence of such groups after personally visiting their training bases in the Transcarpathian mountains two months ago".

"The talks that Novorossia should return to a single country, renewed or pro-Russian, can be closed. Those conversations are led by either scoundrels or fools. Ukraine can only end up the same as in the video. That means, Russia should fight for the absence of any Ukraine on its borders, and the presence of Novorossia and Malorossia".

"For those who cannot reconcile and want to act! ... Prepare for the march for Kyiv for the restoration of the legal government in the country or accept the absence of any power. We demand the liberation of all political prisoners who were imprisoned by Kyiv bandits, and prosecution of all participants of coup d'etat in the country!"

"For independent Novorossia as a member of CIS..."

"Citizens of Ukraine, begin carrying out the actions of civil disobedience, block the roads, do not allow the Slavs to shoot the Slavs!"

"And now I officially announce the reward in the amount of 1500$ for the head of Nalivaychenko, the head of SSU"; "I urge all people to shred the leaflets and not appear in military registration and enlistment offices. Let us destroy Poroshenko and stop the war!"; "Why do bloody murderers, Poroshenko and Nalivaychenko, still hold their offices? Let us take up arms and go to Kyiv, against Poroshenko! Off the monster and his whole gang!"; "Poroshenko, we will... off you! It is only a matter of time. Better run from the post of the President and from Ukraine as far away as you can".

However, the preventive measure in the form of detention in SIZO was chosen in around a half of the cases, at the moment of delivery of the court decision in **18 cases** the defendants were in custody in SIZO. In our view, the detention in SIZO in cases of accusation for the posts in social networks, no matter how stupid and meaningless those posts may be, is a too harsh preventive measure.

In **57 cases (81.4%)** the sentences were delivered with probation, if the defendants were in custody, they were released in the courtroom. In **48 cases (68.57%)** the defendants signed plea agreement with the investigation and it was approved by the court. Two acquittals were approved.

In **5 cases (7.1%)** the court applied Article 69 of the CC of Ukraine and imposed a sentence lower than the lowest limit specified in Article 109. One case involved the fine in the amount of UAH 8500, in another case two defendants were released due to the expiration of the term of the punishment after the re-calculation of the time spent in SIZO as 1 to 2; in two cases the sentence was delivered with probation, in the fifth case three defendants received 5 years 6 months, 5 years, and 5 years and 1 month of imprisonment, while the time spent in custody in SIZO was was found by the court as 4 years, 10 months and 17 days for each of them.

In the remaining **8 cases (11.4%)** the sentences constituted 2 years; 4.5 years; 6 years; 6 years and 6 months; 6 years and 8 months; 8 years; 8 years with the forfeiture of property; 12 years; 15 years and 14 years of imprisonment, both with the forfeiture of property. Three examinations were in absentia, since the defendants were not detained and were wanted. In 7 of those eight cases the defendants were also accused of commission of crimes under other articles of the CC– 110, 263, 258-5, 111. In 4 cases the courts qualified the crimes as serious, in 2 – as particularly serious.

Thus, only in **11.4%** of the cases the courts applied the punishment that provided for a real imprisonment. Let us examine, for example, the case No.426/15638/18. The defendant, a resident of Krasniy Luch town (currently Khrustalniy) of Luhansk region, who was elected a deputy of Krasniy Luch town council in 2010, was accused of the crimes qualified under pt. 1 of Article 109, pt. 2 of Art. 110, pt. 1 of Art. 268-3. His intentional criminal acts consisted of agreeing and being elected a deputy of the first convocation of the so-called parliament of the self-proclaimed "Luhansk People's Republic", on its first session he voted with other deputies for the adoption of the so-called "Interim main law of the constitution of Luhansk People's Republic" and subsequently he approved a number of "laws" of the so-called "LPR". He was a member of the so-called parliament of the so-called "DPR" between 18 May and 17 November 2014.

On 6 July 2018 Lisichansk city council approved the plea agreement of 26 June 2018 between the defendant and the prosecutor and imposed a total sentence approved by the parties, in the form of 8 years of imprisonment without the forfeiture of property.

Thus, it can be concluded that the courts corrected the total cruelty of SSU shown during the pre-trial investigation. In general, the case law was humane, if one is to be certain that the defendants sentenced to probation were not used forcibly for the exchange, meaning that the release was not caused by that very need.

Another conclusion: the statements about the mass political persecution of the opponents of Ukrainian state are groundless. The motives of the criminal prosecution under Article 109 are certainly political, but it is not sufficient for the conclusion that particular arrested persons in the period of detention could be called political prisoners. There is not enough information for the correctness of such conclusion: it is not enough to only read the sentence, it is necessary to know the details of the criminal proceedings. It should be noted that the European Court of Human Rights did not recognize the criminal prosecution for incitement to violence as a violation of freedom of expression. The mass admittance of guilt, repentance and the sentences that do not provide for imprisonment are not typical of political persecution observed in 1960s–1980s, furthermore, each sentence back then was both unlawful and unjust. On the contrary, the case law in 2014–2019 was generally adequate.

A short description of the court decisions under Article 109 of the CC of Ukraine, delivered by the first-instance courts in 2014–2019 (the date of sentence, court name, data from the operative part of the sentence) can be downloaded here.

Application practice of Article 110 of the Criminal Code of Ukraine

In common speech Article 110 of the CC of Ukraine has the title "Article for separatism". **Here is its wording:**

Article 110. Trespass against territorial integrity and inviolability of Ukraine

01 *Wilful actions committed to change the territorial boundaries or national borders of Ukraine in violation of the order provided for in the Constitution of Ukraine, and also public appeals or distribution of materials with appeals to commit any such actions, - shall be punished by imprisonment for a term of three to five years with or without forfeiture of property.*

02 *Any such actions, as provided for by paragraph 1 of this Article, if committed by a member of public authorities or repeated by any person, or committed by an organised group, or combined with inflaming national or religious enmity, - shall be punished by imprisonment for a term of five to ten years with or without forfeiture of property.*

03 *Any such actions, as provided for by paragraphs 1 and 2 of this Article, if they caused the killing of people or any other grave consequences, - shall be punished by imprisonment for a term of ten to fifteen years or life imprisonment with or without forfeiture of property.*

Article 110

Article 110 is under the jurisdiction of the Security Service of Ukraine (SSU). It is the most used article in the investigation of crimes against the national security: around a thousand criminal proceedings were opened under this article in 2014-2019, first-instance courts delivered more than 500 sentences. The summarized data concerning the investigation of crimes qualified under Article 110 is taken from the site of the Prosecutor General's Office, and concerning the court decisions under this Article – from the Unified Register of Court Decisions, and compiled in the table:

Article 110 of the CC of Ukraine	2014	2015	2016	2017	2018	2019	Total
Criminal proceedings recorded	258	205	88	131	146	130	958
Suspicions of crime handed	90	68	38	80	70	67	413
The number of proceedings directed to court with the bill of indictment	45	57	31	63	54	54	304
The number of closed proceedings	33	5	4	5	2	4	53
The number of proceedings concerning which the decision to terminate or suspend them has not been taken yet	176	141	54	61	85	72	589
The number of judgments delivered	29	52	60	83	100	186	510

The analysis of sentences from the register of court decisions shows that the defendants under Article 110 can be conditionally divided into three major groups. The first group consists of the former officials (leadership of local governments, deputies and officials from local councils etc), accused of organisation of referendums on 11 May 2014 or contribution to it. In most of those cases the preventive measure in the form of detention was not chosen and the sentences were delivered with probation. The second group is the biggest, it consists of the distributors of the separatist editions, in particular, "Novorossia" newspaper and leaflets, as well as of posters in social networks. Most often such cases also ended in suspended sentence. The preventive measure for the accused persons of two groups was sometimes chosen in the form of detention, which was hardly justified, since almost all of them pleaded guilty. However, there were cases that significantly differed from the general picture, we will examine some examples separately. At the same time SSU did not find the elements of a crime in the actions of two officers from the management of Berdychiv correctional colony No. 70 who distributed "Novorossiya" newspaper among the convicts, although the distribution of anti-Ukrainian newspapers on the territory of a closed-type institution by its employees is clearly unacceptable and should have received legal assessment.

The third group of the defendants consists of the persons who took up arms as members of illegal armed formations, but have not committed grave crimes. Detention in SIZO was used more often in this group of cases than in two previous groups, the courts delivered the sentences that provided for the deprivation of liberty for short terms, most often for one year. Some sentences are striking due to their leniency that suggests that individual defendants were released for the exchange for our prisoners of war and civilian hostages.

In general, the article seems to be a "rubber" one, it is used for qualification of various actions. Thus, for example, the same Kyiv District Court of Kharkiv with the interval of one month, on 18 September and 19 October 2015, delivered two decisions under pt. 1 of Article 110 of the CC of Ukraine. The first one is a sentence with probation concerning a settler, a person with the second group of disability, who in 2014-2015 continued working as the deputy Director of the state enterprise *"Donvuglerestrukturizatsiya" in Makiivka and thus "provided the functioning of the enterprise in favour of the self-proclaimed DPR"*. The second – 4 years of imprisonment for a person previously convicted for patrolling the territories as a member of "Vostok" battalion and other illegal armed formations of the so-called "DPR".

Let us briefly examine the typical examples from all three groups, as well as the cases that fall out of the general picture.

A resident of Mariupol in April-May was the deputy head of the territorial election commission for the organisation of the "referendum" on 11 May 2014. He was accused under pt. 2 of Article 110 of the CC of Ukraine, arrested on 21 June 2014. He signed the plea agreement with the prosecutor, it was approved by Primorsky district court of Mariupol on 14 October 2014, released in the courtroom. The sentence – five years with the probationary period of three years.

Volodymyr Protsenko, Debaltseve mayor, elected from the Communist Party of Ukraine, was accused under pt.2 of Article 110 of the fact that on 5 May 2014 he submitted the issue on provision of the premises for holding the "referendum" on 11 May for the consideration at the extraordinary session of Debaltseve town council and signed the relevant decision. He was in SIZO since January 2015. Protsenko pleaded innocent, explaining that the proposition to provide the premises was given by a

deputy from the Party of Regions, he did not prepare and did not sign the text of the decision. The witnesses, including the ones from "Batkivschina" party, testified in the court that the Ukrainian flag was hanging on the building of Debaltseve town council, and Protsenko had pro-Ukrainian position and did not satisfy the Party of Regions. On 22 December 2015 a judge from Kostyantynivka city court, Andriy Mirosyedi, declared the evidence of the prosecution inappropriate, took into account the testimonies of the witnesses and acquitted Protsenko, he was released in the courtroom. 9 deputies from Verkhovna Rada, led by Mustafa Nayem, dissatisfied with the acquittal, asked the High Qualifications Commission of Judges to bring the judge to responsibility, however, they did not provide any legal argument. Protsenko did not appear for the appellation proceedings and on 26 June 2016 he was declared wanted. HQC disagreed with the people's deputies, Andriy Myrosyedi still works as a judge.

Oleksandr Babenko, the head of Novoaydar town council, was accused under pt. 1 of Article 110 of the fact that on 9 May 2014, on the rally in Novoaydar village he encouraged people to participate in the "referendum for the independence of LPR" on 11.05.2014 and agitated to vote for the creation of "LPR". Since 6 August 2014 he was held in SIZO. He pleaded innocent and testified that he was the presenter at a celebratory rally, but he did not encourage the referendum or "LPR". The chief editor of "Visnyk Novoaydarschyny" newspaper, where Babenko's congratulatory festive performance was retold, stated in the court that the incriminating testimony during the pre-trial investigation *"was given after coercion, since the military commandant of Novoaydar village brought him handcuffed to Polovynkyne village of Starobilsk district, where Babenko underwent unlawful actions of physical and mental coercion by the armed individuals"*. A month after that SSU opened the proceedings under pt. 2 of Article 110 against the journalist himself, checking the May publications of the "Visnyk". Other witnesses, the participants of the rally, testified in the court that the accused did not encourage referendum or the separation of the territories from Ukraine, although one witness stated that Babenko's speech contained criticism against the current Kyiv government. On 26 June he was acquitted by the court and released from custody. However, on 18 September the court of appeal quashed the decision, noting that the defence did not disclose its witnesses to the prosecution in advance, and remitted the case for the fresh consideration. On 12 March 2015 the accusation was changed, and on the same day Babenko was placed in custody: he was additionally accused of preparation and holding of "referendum" on 11 May, he was held in SIZO until 20 October 2016 when the sentence with probationary term was delivered.

Anton Davydchenko, being a leader of Odesa movements "Youth Unity" and "People's Alternative", in February-March 2014 was on air on TV channel "ATV" and on the rallies in the centre of Odesa he encouraged the "federalization" and holding the referendums on the withdrawal of a number of regions from Ukraine for the creation of "Novorossiya". He was arrested on 17 March 2014, he spent more than 4 months in custody. He pleaded guilty, signed the agreement with the prosecutor, and on 22 July the sentence was delivered under pt.1 and 2 of Article 110 – 5 years of imprisonment with probationary term of 3 years. He was released in the courtroom.

Oleksiy Grek, a citizen of Moldova, Archpriest of the UOC of the Moscow Patriarchate, served in Izmail. He published the "Otkroveniye" newspaper, its issues No.18-19 (May 2014) contained *"public calls for physical destruction of those who support Ukrainian government"*, support for illegal armed formations etc. The copies were distributed on the market of Izmail, in the parish and in the internet. The preventive measure was not chosen. Grek's actions were condemned by Diocesan Council of the Odessa Diocese for aggression. Grek pleaded guilty and signed the agreement with the prosecutor.

On 26 May 2015 that agreement was approved by Izmail city district court, the sentence under pt. 1 of Article 110 – 4 years of imprisonment suspended for 2 years.

Yuliya Smagina, a cook, raises a young child. Between June 2014 and January 2015 she was distributing through "Vkontakte" social network the calls for the creation of "Kharkiv People's Republic" and supported "DPR" and "LPR", made 122 posts on those topics in total. She was accused under pt.2 of Article 110. She pleaded guilty. However, she was held in custody in SIZO between 23 January and 25 December 2015, when Chuguyiv city court delivered the sentence in the form of imprisonment for 1 year and 10 months. With the calculation of 1 day in SIZO as 2 days of imprisonment her punishment term ended. In our view, Smagina spending 11 months in SIZO was unjustified and constituted unnecessary cruelty.

A manager from Moscow, **Volodymyr Bezobrazov**, a Russian national, was accused under pt. 2 of Article 110 of the fact that, being with his family on vacation in Karolina-Butaz of Odesa region, by prior agreement with unidentified persons, he recruited local residents in cafes to move to Luhansk and serve in "LPR" for payment. He was held in Odesa SIZO since 19 June 2014. During the investigation he pleaded guilty, but during the trial he stated that he did not admit guilt. The sentence delivered on 14 August by Ovidiopol district court of Odesa region – 5 years of imprisonment – was appealed against in the court of appeal, which quashed the sentence on 23 October 2014 and remitted the case to the trial court for the fresh consideration. The previous conspiracy with unidentified persons disappeared from the indictment, only the cafe episode remained. Bezobrazov signed the plea agreement with the prosecution, it was approved by Ovidiopol court on 6 March 2015: 3 years and 3 months of imprisonment with 2 years of probationary term. Below is the description of subsequent events from a human rights activist, Krasimir Yankov, then an employee of Human Rights Watch (currently leading Kharkiv department of Monitoring Mission of the Office of the United Nations High Commissioner for Human Rights): *"When he left the courthouse he was at once approached by a minivan, and masked people wearing camouflage shoved him in the minivan and took him away. His relatives and lawyer believed that several days later he would appear in LPR after the exchange. However, several days later they learned that the exchange was not carried out for unknown reasons. That is how Volodymyr Bezobrazov appeared in Kharkiv. Then they tried to exchange him several times. In October 2015 the investigators from SSU gave him a phone and he called his mother. He read her a prepared note that said that there will be no further exchanges, let his mother that lives in Moscow apply to a representative of the Ombudsman in the so-called "DPR to include him in the exchange lists. His mother applied there, but the ombudsman's office in the "DPR" replied: "Why do we have to help you? Your son did not do anything for us. We do not know him. We are interested in the release of our fighters and the people who worked for us". Therefore we deal with the person who was detained for the pro-Russian views and verbal support for pro-Russian separatists in the East of Ukraine. They tried to present him as an ardent separatist who seemingly conducted illegal activity on the territory of Ukraine, to exchange him later for the Ukrainian prisoners held by the representatives of "DPR" and "LPR". As it turned out, that person was not involved in anything, he was only expressing his views. And they failed to make him an "exchange coin" in a very dirty game for the exchange of the prisoners of war. He found himself in a complete legal vacuum."* (my translation – Ye.Z.) So, Volodymyr Bezobrazov did not commit the actions he was convicted for, and it was impossible to exchange him. On 17 December 2016 Bezobrazov was taken from SIZO and released not far from the contact line. He was able to get to Donetsk and subsequently return to Moscow. In our view, Volodymyr Bezobrazov could be considered a political prisoner for the entire period of detention.

Olena Ivanovska, the head of Nizhnya Olkha village council in Luhansk region, transmitted by phone to "LPR" the information about the location and movement of the Ukrainian divisions. She was arrested by SSU in late August 2014 and accused under pt.2 of Article 110 of the CC of Ukraine. The preventive measure was not chosen. Ivanovska signed the plea agreement with the prosecution, and the court approved it in the sentence – 5 years of imprisonment with the probationary term of 1 year.

A resident of Krasnograd, a tower assembler, left for Alchevsk on 16 April 2015, to join the "Prizrak" brigade. He received AK-47 assault rifle that was not actually used by him, however, as stated in the sentence, *"its appearance put psychological pressure on the representatives of Ukrainian government and local residents with the aim of the change of territorial borders of Ukraine for the separation of Luhansk region to the territorial formations not provided by the law"*. He used to repair military and civilian vehicles of "Prizrak" battalion until 6 May 2015, when he went home. Furthermore, in that period he obtained two RGD-5 grenades with a primer, one F-1 grenade with primer and 90 5,45 mm rounds that he brought to the place of his residence. He sold some of the ammunition and kept the rest home until 22 July 2015, when they were seized during the search. He was accused of crimes under pt.1 of Article 110 and pt.1 of Article 263 of the CC of Ukraine, preventive measure was the detention. He admitted his guilt in full, repented and explained that he committed his crimes "because of the wish to see what was really happening there and because of his mistake". The sentence – 3 years and 6 months of imprisonment suspended for 2 years.

A resident of Sumy, **Roman Kolisnyk**, was accused under pt.1 of Article 263 of the CC of Ukraine of illegal possession of weapons and under pt.1 of Article 110 – of public calls to the violation of territorial integrity of Ukraine. Kolisnyk numerously distributed such posts from the groups in "Vkontakte" social network as *"Thanks for taking the Crimea! Take us, too... Do not leave us to be torn apart by the Nazis from the western regions"*, *"Two Ukraines is a matter of time"* etc. (38 posts in total). A grenade was seized from him during the search. Kolisnyk pleaded guilty partially: he found the grenade, and he did not distribute the posts, only "liked" them. One of the witnesses testified in the court that he told her that he would leave to Donbas to fight for illegal armed formations. On 21 October 2015 the court delivered the punishment under pt. 1 of Article 110 in the form of imprisonment for 2 years, under pt. 1 of Article 263 – for 3 years, by partial addition of punishments the court finally sentenced Kolisnyk to 4 years in prison, taking into account around 5 months that he spent in SIZO. The sentence was upheld on appellation and cassation.

Yuriy Abakumov, a deputy from Krasnograd district council of Kharkiv region, was accused under pt. 1 of Article 263 of the Criminal Code of Ukraine of illegal possession of weapons and under pt. 2 of Article 110 – of transgression on territorial integrity of the state. He was in custody in SIZO since 12 February 2015. An "RGD-5" grenade and 7,62 round were found in his wardrobe during the search. Abakumov had a permit for a hunting rifle that was kept with the rounds in armored safe, therefore the possession of ammunition in his linen looked weird. Also, according to the accusation, Abakumov promised by phone to contribute a vehicle to Luhansk sabotage and reconnaissance group during its movement in Kharkiv region. Abakumov pleaded innocent, he said that the grenade and the round were planted, and the phone conversation concerned the evacuation of his civilian relatives from LPR, and not for contribution of vehicles for the militants. On 4 February 2016 the court acquitted Abakumov under Article 110, and under pt.1 of Art. 263 of the CC of Ukraine he received the punishment with application of Article 69 of the CC of Ukraine, below the lowest threshold established by the sanction of that Article, in the form of imprisonment for 1 year and 11 months.

Given that the term of the pre-trial detention that Abakumov already served exceeded the actual sentence already imposed on him, the court released him from custody immediately. On 31 May 2016 the court of appeal upheld the acquittal under Article 110 and quashed the sentence under Article 263. Thus, Mr. Abakumov can reasonably be considered a political prisoner for the period of almost year-long detention.

Let us summarize. In our view, there are reasons to discuss the possible violations of right to freedom and personal inviolability, when a preventive measure in the form of detention in SIZO during the pre-trial investigation was applied to the persons convicted under Article 110 of the CC of Ukraine who did not pose social danger and whose actions did not have grave consequences. To make a reasonable conclusion it is not enough to see the sentence in the register of the court decisions, the entire case should be examined. However, the right to freedom with a great probability was violated concerning at least 52 accused, released from custody in the courtroom after the delivery of the sentence of shortly before it.

In general, it can be concluded that the case law under the article 110 of the CC of Ukraine was humane (if the possible releases from custody in the sentences with probation with the aim of exchange are not to be taken into account). In **437 cases (85.5%)** the sentences were suspended. In **316 cases (61.8%)** the court approved the plea agreement with the prosecutor. In **64 cases (12.5%)** the courts applied Article 69 of the CC of Ukraine – imposing a milder punishment than provided by the law. In 1**0 cases (1.96%)** the accused were acquitted. 1 sentence contained a fine, 4 cases – imprisonment.

In **74 cases (14.48%)** the sentence provides a real imprisonment, **47 of those sentences (9.2%)** – up to 5 years (including), **27 sentences (5.28%)** – more than 5 years. In more detail, **11 sentences (2.15%)** – 2 years of imprisonment or less, **19 sentences (3.72%)** – between 2 and 4 years of imprisonment, in 17 cases the punishment was between 4 and 5 years long (including), in 17 cases – between 5 and 8 years, in 10 cases – more than 8 years (in those cases the accused are also convicted for other Articles of the CC – 109, 111, 258-3, 263). In 8 cases there was also the forfeiture of property. It should be noted that the strictest sentences were delivered in 11 cases in special court proceedings in absentia.

In the opinion of the European Court of Human Rights, a key factor in the assessment of the act that is qualified as a crime under Article 110, is an answer to the question – whether or not the accused encourage the violence. In case of presence of the calls to violence and hostilities or terrorist acts the restraint in the freedom of expression in the form of criminal prosecution cannot a priori be considered a violation of human rights. Next, the consideration should move to the plane of assessing the proportionality of state intervention. At the same time calling the government "junta", support for referendums and participation in them (including unrecognized ones) or even support for the outlawed self-proclaimed "DPR" and "LPR" or the so-called "Novorossiya", unrelated to the direct calls for violence or support for hostilities of such formations can be considered a violation of the freedom of expression if such opinions are criminally prosecuted. Whether there was a violation of the freedom of expression, depends on particular circumstances and details of each case. However, given the case law it could be said that the statements about the mass political persecutions of the supporters of federalization, division of Ukraine and self-proclaimed "people's republics" are groundless, although in some individual cases the criminal prosecution can be reasonably called a political one.

We provide the annex with short data on **510 delivered sentences.**

The practice of application of Article 111 of the Criminal Code of Ukraine

The general review of the criminal proceedings under Article 111 of CC of Ukraine

Article 111 of the CC of Ukraine is investigated by SSU and punishes for an expecially serious crime of the **state treason:**

01 *High treason, that is an act wilfully committed by a citizen of Ukraine in the detriment of sovereignty, territorial integrity and inviolability, defence capability, and state, economic or information security of Ukraine: joining the enemy at the time of martial law or armed conflict, espionage, assistance in subversive activities against Ukraine provided to a foreign state, a foreign organisation or their representatives, - shall be punishable by imprisonment for a term of twelve to fifteen years with or without the confiscation of property.*

02 *A citizen of Ukraine shall be discharged from criminal liability where, he has not committed any acts requested by a foreign state, a foreign organisation or their representatives and voluntarily reported his ties with them and the task given to government authorities.*

Article 111

The summarized data concerning the investigation of crimes qualified under Article 111 of the CC of Ukraine is taken from the site of the Prosecutor General's Office, and as for the court decisions under that Article – from the Unified Register of the Court Decisions. **They are compiled in the table below:**

Article 111 of the CC of Ukraine	2014	2015	2016	2017	2018	2019	Total
Criminal proceedings recorded	54	19	38	59	118	94	382
The notices of suspicion handed	30	11	16	25	31	31	144
The number of proceedings transmitted to court with the bill of indictment	8	4	5	8	12	11	48
The number of closed proceedings	2	6	4	6	4	7	29
The number of proceedings concerning which the decision to terminate or suspend the proceedings was not taken by the end of the year	26	8	24	41	83	63	245
The number of adopted court decisions	1	3	6	3	7	14	34

The number of handed notices of suspicion of the crime under Article 111 (144, **37.7%** of the total number of recorded criminal proceedings) is not significantly different in relative terms from the number of handed notices of suspicion under Articles 109 (110, **39%**) and 110 (413, **41.1%**). It is noteworthy that the indictment was sent to court only in a third of the proceedings in which the notice of suspicion was handed.

It is much smaller than the number under Article 109 (**67.3%** of the bills of indictment from the number of proceedings in which the notice of suspicion was handed) and Article 110 (**73.6%**). In our view, it indicates the weakness of the legal position of the prosecution and possible errors in the qualification of the crimes as high treason and unwillingness to admit this (because "the state bodies do not make mistakes"), and thus the investigations drag on for years, and the accused stay in SIZO. And when such case is transferred to a court for trial, the accusation turns out to be unfounded, however, according to the general tradition of Ukrainian jurisprudence, the courts rarely dare to acquit the accused. Let us provide the relevant examples of the military persons being accused of the high treason.

On 15 November 2017 Kuybyshev district court of Zaporizhzhia oblast declared in absentia the sentence for a serviceman, R., under pt. 2 of Article 409 and pt. 1 of Article 258-3 of CC of Ukraine and sentenced him to 9 years of imprisonment with the confiscation of all property belonging to him. The court acquitted R. under pt. 2 of Art. 111 *"for the lack of the event of a crime"*.

On 28 August 2014 R., a serviceman, was captured by the servicemen of RF while performing the combat missions, after which he was brought with other prisoners to the building of Snizhnyansk City Department of the MD of MIA of Ukraine in Donetsk oblast and handed over to the representatives of "DPR" terrorist organisation, where he was subsequently detained. Around 17-18 October 2014 R. *"deliberately, wilfully joined the terrorist organisation "DPR" and undertook to follow the rules of conduct established in the terrorist organisation, and perform the functions given to him"*. He incited other prisoners of war through persuasion and threats to join the terrorist organisation "DPR" as well, and when they refused, he beat one of them. In early April 2015 R. Joined the so-called "First Slavic Brigade" (*"1st separate infantry brigade – military unit 08801"*).

The court qualified R.'s actions under pt. 2 of Art. 409 of the Criminal Code of Ukraine as refusal to perform military service, as well as under pt. 1 of Art. 258-3 of the CC of Ukraine as involvement in a terrorist organisation.

As for the accusation by pre-trial investigation body of the high treason in the form of transition to the side of the enemy during the armed conflict, the court noted that *"the so-called "Donetsk People's Republic" is essentially a terrorist organisation and does not have any features inherent in the state. Furthermore, said "formation" is not recognized as a state by either Ukraine or any other States or international organisations"*. Thus, the statement that R. transitioned to the side of the enemy, which according to the wording of pt. 1 of Article. 111 can only be represented by another State or State formation, is erroneous. In the court's view, the actual circumstances of illegal actions incriminated against R. under pt. 1 of Article. 111 of the CC of Ukraine coincide in their content and essence with the facts established under pt. 2 of Art. 409 of the CC of Ukraine, as well as pt. 1 of Art. 258-3 of the CC of Ukraine. The court reached the conclusion that R.'s actions do not contain the signs of the high treason and acquitted him under pt. 1 of Article 111 of the CC of Ukraine.

Another example of a court decision lies outside the period of examination (2014-2019), but it is indicative, therefore we would provide it. On 7 April 2020 Shevchenkivsky district court of Kyiv city handed down a conviction to **Bezyazykov Ivan Mykolayovych**, a colonel of the Armed Forces of Ukraine, chief of intelligence of the 8th Army Corps, under pt. 1 of Art. 111, pt. 1 of Art. 258-3 of the CC of Ukraine and sentenced him to 13 years of imprisonment.

The conviction states that on 16 August 2014 Colonel Bezyazykov received a mission from the Chief of Staff of Sector "D" to arrive to Stepanivka village of the Shakhtarsky district of Donetsk oblast, where he was to negotiate with the representatives of illegal armed formations of the terrorist organisation "Donetsk People's Republic" on the topic of the possible exchange of prisoners. The fact of reception of such mission was not properly verified. According to the Statutes of the Armed Forces, the mission has to be formulated in writing, however, the court did not examine the written document directly. Furthermore, it was not checked, whether the Chief of Staff of Sector "D" had the power to decide to authorize a person or a group of persons for the negotiations with terrorists.

Moreover, Bezyazykov I. M. had access to state secrets, as was stated in the court by the questioned chief of sector "D" who gave the mission, – Bezyazykov I.M. was a carrier of a classified information.

That said, for the entire time of Bezyazykov I.M. being a prisoner, between 16 August 2014 and 5 July 2016 , no information known by him was used by the militants. It is evidenced by the lack of reference to the relevant facts in the conviction.

While delivering the sentence the court does not take into account the Geneva Convention relative to the Treatment of Prisoners of War, despite the fact that it constantly points to the proved fact of him *"being imprisoned in the territory of Donetsk city in Donetsk oblast uncontrolled by Ukrainian government"*.

Thus, on one hand, the court establishes that Bezyazykov I.M. was imprisoned and does not deny that since 16 August 2014 he was kept in the building of SSU of Donetsk city with other prisoners, where he was questioned with the use of physical violence, since 25 August 2014 he was held in the cellar of the building that was located in the park area of Donetsk city and he was taken to the so-called "office" which was located in the building of the former private company on Schors street in Donetsk.

On 25 May 2015 Bezyazykov I.M. *"was brought by unidentified persons first to the office building located at ADDRESS-7, where he was held imprisoned for near a month, subsequently he was transferred to the cellar, and then the basement of the institute of physical education in Donetsk, where he was held separately from other prisoners. In August 2015 the building in which he was held was captured by another armed formation, he was transferred to Donetsk television centre, where he was held imprisoned before his release on 5 July 2016".*

Based on the circumstances of Bezyazykov I.M. being imprisoned for almost 2 years, he was accused of high treason and involvement in a terrorist organisation for only 9 months. It leads to a question, why a participant of a terrorist organisation who, in the court's view, performed certain tasks for the militants, was kept imprisoned for more than a year?

The witnesses' testimonies on which the conviction was based do not corroborate the actions by Bezyazykov I.M. which could evidence the high treason or participation in the terrorist organisation. Moreover, most of the testimonies are the testimonies from other people's words which already have a certain interpretation with an accusatory bias.

The used materials of covert investigative actions taken from other criminal proceedings, the data from the "Stop Terror" resource, the positions provided in the sentence, official duties and the functions of the officials of the so-called investigation department of "DPR" referenced in the conviction, as well as the very structure of DPR, the presence of political and power block, the plan of criminal activity and clear distribution of functions of the participants for its performance, are clearly unacceptable pieces of evidence, because there are no evidence provided for by CCP which could justify their establishment by the court.

In general, the court reached the conclusions on the basis of the legislation which came into force after the events incriminated to Bezyazykov I.M. The court relied on the concept of the "armed conflict", introduced in the Law of Ukraine "On the National Security" of 21 June 2018, whereas it should have applied the norms of legislation which were in force in 2014, namely: the laws of Ukraine "On the Defence of Ukraine" and "On Mobilization Training and Mobilization" and the Presidential Decree "On Partial Mobilization".

One would hope that the appellation instance would rectify the violations and deliver a fair and lawful verdict. However, the appellation consideration is yet to take place, while 8 months passed already. Isn't this because the first-instance sentence is to be quashed?

Let us return to the examination of the court decisions under pt.1 of Article 111 of CC of Ukraine in 2014-2019. Out of **34 delivered verdicts** in 20 cases concerning 21 defendants the courts delivered the sentences of imprisonment for 12 to 15 years, four cases also involved the confiscation of property (12 years – 11 sentences, 13 years – 4 sentences, 14 years – 5 sentences, 15 years – 1 sentence).

In one case there was the acquittal. In three more cases the defendants were acquitted under Art. 111, but convicted under other articles of CC: In one case the sentence was three years of imprisonment with probation (see below the description of A.'s case), in another – 3 years and 6 months (the case of Ruslan Kotsaba, a journalist), in the third one – 9 years of imprisonment with the confiscation of property (the case of serviceman R.).

In 6 cases, the court approved a plea agreement with the prosecutor. In two of such cases the defendants were released in the courtroom because of the actual serving of the sentence, in the rest four cases the punishment was the imprisonment for 4 (two sentences), 6 and 9 years.

In 11 cases the court used Article 69 of the Criminal Code of Ukraine – the application of a more lenient punishment that the one prescribed by the law, including the 6 cases in which a plea agreement was signed. As a result, in 5 sentences the punishment was 4 years or smaller, in two sentences – 6 years of imprisonment, in three – 7, 8 and 9 years of imprisonment.

The sentences in 8 cases were delivered in the special court proceedings in absentia.

The Annex contains the short data on the sentences delivered (the date of the sentence, the name of the court, the data from the operative part of the sentence).

Since Article 111 of the Criminal Code of Ukraine is, in our opinion, the most problematic in the investigation of crimes against the foundations of the national defence of Ukraine, given the respect for human rights, a more detailed examination of the court decisions is necessary. Usually the correct findings can be reached only on the basis of examination of the materials of the criminal proceedings as a whole, and not only one sentence, but the analysis of the decisions gives reasons for certain findings concerning the tendencies that could be seen.

Thus, we would examine the court decisions in more detail. They can be divided into the following groups:

- the decisions concerning the events connected to the annexation of Crimea (10 sentences);
- the decisions about the transfer to a foreign State of an information constituting a State secret or other kinds of secret provided by the law (12 sentences);
- the decisions concerning the actions directed at harming the sovereignty and territorial integrity of Ukraine (9 sentences)
- the decision about a prisoner of war who joined the illegal armed formations of the so-called "DPR" (1 sentence – concerning serviceman R., examined above);
- other decisions (2 sentences).

We will give a separate examination to the criminal proceedings under Article 111 of the Criminal Code of Ukraine in which the journalists were accused in connection with their professional activity.

The court decisions concerning the consequences of the annexation of Crimea

There were 10 such decisions: 5 concerning the servicemen and 5 concerning civilians. We will start with the civilians.

4 sentences were delivered in the special court proceedings in absentia. Three of them concerned two judges from the Court of Appeal of ARC and a judge from Commercial Court of Appeal of Sevastopol who continued working as judges in the same courts, only renamed, under Russian legislation. The fourth sentence was delivered against a deputy of Verkhovna Rada or ARC who voted for accession of Crimea to Russia and remained the deputy of the "State Duma of Crimean Republic". All cases were examined by the same Svyatoshinsky district court of Kyiv in the second half of 2019, they were very much alike and the position of the court was the same: the defendants committed a high treason, namely, deliberately, harming the sovereignty and territorial integrity of Ukraine, assisted Russia, as a foreign State, in carrying out subversive activities against Ukraine. The former judges (they were fired for violating the oath) received punishment in the form of imprisonment for 12 years, the deputy – 14 years of imprisonment).

The fifth sentence, delivered on 19 November 2018 by Dnipro district court of Kyiv in ordinary court proceedings in the presence of the defendant, was delivered to **Vasyl Ganysh**, born in 1957, a former Deputy Head of Feodosiya city council and a deputy of Verkhovna Rada of ARC, who on 11 April, as stated in the verdict, *"took part in an extraordinary meeting of illegally created body "State Rada of Crimean Republic"... in which 88 former deputies of Verkhovna Rada of Autonomous Republic of Crimea unanimously adopted the so-called "Constitution of the Republic of Crimea", as a subject of the Russian Federation".*

In reality, according to Mr. Ganysh, he did not took part in the voting on 11 April, since on 6 March, when the issue of holding a referendum on the accession to RF was voted on, he was the only one person present who voted against it, on the same day he relinquished his voting card and has not participated in the work of Verkhovna Rada of ARC since then. In the court Ganysh stated that *"after graduation he moved to the Autonomous Republic of Crimea, where he worked, was elected a deputy of the city council of the majority lists, a deputy of Verkhovna Rada of ARC. Being a deputy, he founded the schools, was one of the founders of the Crimean Department of organisation of Ukrainian intelligentsia and "Prosvita". It was in the 90s. Being a deputy, he provided all kinds of help to Crimean Tatars through his actions. When in 2000s he headed the tax service in Feodosiya, one of his first steps was the translation of all documentation in Ukrainian, for which he was harshly criticized by the management of the Crimean and Ukrainian tax service, but subsequently everything settled down. For his entire life his activity was only pro-Ukrainian. In Verkhovna Rada of ARC he was the Deputy Head of the Culture Committee".*

The court decision – the imprisonment for 12 years – is appalling in its illogicality and cruelty given that Vasyl Ganysh is a 63-year-old man, he is a pensioner, he has a second-group disability with serious heart condition.

In the five sentences against the servicemen who served in the ARC, the prosecution has one legal position, that if they did not arrive to the designated locations in time designated by the armed formations and were not dismissed, they are considered the ones who left the military units, and they are accounted to the relevant officers. The relevant information concerning the search for them is provided to the law-enforcement bodies. They have committed criminal offences qualified under Article 408 of CC of Ukraine "Desertion". If they started serving in the military units of RF in Crimea, it is corpus delicti under pt. 1 of Art. 111 of the CC of Ukraine.

In all five cases it was that accusation.

Thus, on 16 June 2016 Vinnitsya city court delivered the sentence under pt. 1 of Article 408 of the Criminal Code of Ukraine to A., who until 13 May 2014 served in Sevastopol in military unit A1656 as a senior radio operator, it sentenced her to 3 years of imprisonment. She was acquitted under Art. 111 pt. 2.

In the court A. explained that *" due to the need to pay credit obligations for purchased housing and legal registration of ownership, therefore the impossibility to leave Sevastopol, around 15 April 2014 she applied to the Head of the military unit – the commander of the military unit A1656, with a report on dismissal from military service from the ranks of the Armed Forces of Ukraine. That report was pending, and she was offered to continue serving in the ranks of the Armed Forces of RF, which she categorically refused and did not took the oath of RF...*

The prosecution also accused A. of failure to be transferred to military unit A2656 in Vinnitsya, but there was no transfer order, such order was not issued and she did not have to sign it, therefore, there was no legal regulation of the transfer to the new place of service… Therefore, in the period between April and December 2014 and subsequently until February 2015 she was not a serviceperson of either Armed Forces of Ukraine or Russia, but she did not have any documents of her dismissal during that time. Around 20 January 2015 she received a phone call and was notified that she was dismissed". And she pleaded guilty of the crime under Article 408 of CC of Ukraine.

As noted in the sentence, in the court's view, *"None of the proper and acceptable pieces of evidence provided by the prosecution, which were examined in the court hearing, contains any information about the fact that the accused performed deliberate actions for assisting of the foreign country, foreign organisation or their representatives in subversive activity against Ukraine, the prosecution does not define the nature of the actions, therefore their main sign – the intent – is not proven. Thus, the accused stated that in the middle of April 2014 she filed her report for dismissal from the ranks of the Armed Forces of Ukraine to the commander of the military unit, since at that time she already had years of service and she continued serving in the military unit over the age limit, she was offered to remain in the military unit for the continued service in the ranks of the Armed Forces of RF, but she refused and remained on the territory of Crimea, minding her business and awaiting dismissal, she was not serving anymore".*

The court believes that *"during the court examination no doubtless evidence of the commission of a criminal offence provided for by pt. 1 of Art. 111 of the CC of Ukraine was obtained or provided, Because of that the prosecution should acquit A. for the lack of corpus delicti in her actions".*

The court found A. guilty under pt. 1 of Art. 408 of the Criminal Court of Ukraine and sentenced her to three years of imprisonment with the probation term of 1 year and 6 months. On 22 September 2016 Vinnitsya Regional Court of Appeal upheld the decision. On 1 June 2017 the Higher Specialized Court for Civil and Criminal Cases excluded one piece of evidence and upheld the rest of the sentence.

In our opinion, A.'s actions lack the corpus delicti under Article 408, and she should be fully acquitted.

On 16 January 2017 Darnitsky district court of Kyiv delivered the verdict to S. under pt. 1 of Art. 408 and pt. 1 of Art. 111 of the CC of Ukraine with the application of Article 69 of the Criminal Code of Ukraine, in the form of imprisonment for 8 years. S., a Lieutenant Colonel of the medical service, born in 1977, the head of the medical service and the Deputy Head of the Centre of Medical Rehabilitation, sanatorium treatment and special training "Sudak" was accused under Articles 408 and 111 of the fact that he did not arrive to Mykolaiv, as was intended, but remained working on the same position in an institution subordinated to the Russian Federation – "Sudak" was reorganised as The Centre of the Sports Club of the Army". S. pleaded not guilty, he refused to testify and answer the questions in the courtroom. In his last words he said that he did not commit the crimes he was charged with. He compiled the list of persons who wanted to move to continue serving, and he included himself in the list. On 18 April 2014 he filed the report of dismissal to the Head of the Centre.

On 29 April he left to Kyiv, to clarify the issue of dismissal, but could not get an appointment with the leadership of the Military Medical Department of the Ministry of Defence of Ukraine. He did not enter service of the Armed Forces of RF, did not carry out any agitation, never organised or carried out rehabilitation activities with the servicemen of RF. He was working as a doctor in the civil establishments.

The court found all evidence by the defence which corroborated S.'s statements unacceptable and concluded that "the guilt of the accused was proved "beyond reasonable doubt"during the court examination of the criminal proceedings", although an attentive reader could see that the prosecutor did not provide proofs of the actions of S. Which are qualified as a high treason –similar to the case of A., provided above.

In two weeks Kyiv City Court of Appeal quashed that sentence for procedural reasons and returned the case for the fresh examination to Obolon district court. The jurisdiction to hear the cases under the Article 111 should be defined by the Court of Appeal, but the bill of indictment was directed to Darnitsky district court, bypassing the Court of Appeal, which is a procedural violation leading to quashing of the sentence. The examination of the case in Obolon District Court is ongoing for more than 3,5 years, which only confirms the questionable nature of the accusation. Later the preventive measure for S. was changed and he was released from SIZO.

The rest of the sentences of this group are also questionable, since the accused state that they did not serve in the Armed Forces of RF, and the convincing evidence of transition to the side of the enemy was not provided by the prosecution.

Court decisions on the transfer of information that constitutes a state secret or other secret provided by law to a foreign state

There were 12 such sentences, and the "foreign country" is represented by the Russian Federation in all cases. In each case there is a resident of who receives the secret information keeping the confidentiality of the source. In one case the accused was acquitted. In 8 cases the defendants pleaded guilty in full and repented.

In our opinion, in the cases of this category the essential issue is the following: does the information given to a representative of the foreign country constitute the state secret? Only in that case it could be stated that the high treason takes place in the form of spying. To answer that question it is necessary to state clearly to which point of the Code of Information Constituting the State Secret (CICS) did the provided information belong. If the given information with the restricted access belongs to the category of official information, such offence should be qualified under Article 330 of the CC of Ukraine, and not as a state treason. Then such information should belong to the lists of the information constituting the official secret of the relevant state agency, enterprise or institution which owned it. There are no other options in the Laws "On the Information" and "On Access to Public Information": the information which belongs to the state bodies can either be open, and then it can be disseminated freely, or it is official or secret (constituting the state secret).

Given this question, not all sentences of this group contain the data about appeal to an expert on state secrets who provides the conclusion on whether the information provided to a representative of the foreign country represents a state secret protected by a certain Article of CICS.

Thus, the, sentence delivered on 22 August 2019 by Golosiivsky District Court of Kyiv in a known case which was hotly debated by society, does not contain such reference. In this case the accused was the Depuity Chief of Protocol of the Prime Minister, **Stanislav Yezhov**, who at the same time also worked as an interpreter to the Prime Minister, Volodymyr Groysman.

Stanislav Yezhov was detained on 20 December 2017. On the next day the Deputy Head of the Main Investigative Department of SSU, Vitaliy Mayakov, reported that *"the detained was informing Russian special services on the* **foreign trips and conversations** *of the Prime Minister, Volodymyr Groysman". Mayakov explained that the criminal offence of which Yezhov is suspected, is somewhat different from the intelligence activity: "This form of the high treason, unlike spying, does not provide for the information given to the foreign special services to necessarily constitute a state secret".*

The court decided to hear the case in the open hearing. On 22 August 2018 before the start of the court process Yezhov stated: *"I am accused of working for the GRU of the General Staff of the Russian Federation, but all the testimonies of the witnesses and all case-file materials lack any evidence of not only working for the GRU of the General Staff, but even any evidence connected to Russia. Nothing was collected".* His lawyer, Valentyn Rybin, pointed out that the case lacked the documents constituting the state secret.

However, subsequently their position changed. Yezhov pleaded guilty and repented. He signed the plea agreement with the prosecutor which was approved by the court. On 3 July 2019 near the end of the process the court released the accused under the round-the-clock house arrest with the application of electronic control measure.

The court applied the article 69 of the CC of Ukraine and delivered the punishment in the form of imprisonment for 3 years and 28 days. Under Savchenko's law the court included in the term of Yezhov's sentence the term of his pre-trial detention between 20.12.2017 and 03.07.2019 including, calculating 1 day of pre-trial detention as 2 days of imprisonment, which constitutes 3 years and 28 days. The court replaced the round-the-clock house arrest with personal undertaking before the sentence came into force.

As stated in the sentence, the investigation found that in the period between 16 June and 20 December 2017 the accused was giving *"the information in the area of economics, defence and foreign relations of Ukraine to the persons unidentified by the pre-trial investigations, the representatives of the Main Department of the General Staff of Armed Forces of the Russian Federation – the documents and information about the planning, preparation and realization of the foreign visits of the Prime Minister of Ukraine, his contacts with the foreign partners, including confidential ones, as well as other aspects of potential international, defence, economic and political cooperation of Ukraine with the relevant foreign countries, some of this information was not to be published and became known to him during the performance of his official duties on the position of the Deputy Head of the Protocol of the Prime-Minister*

of Ukraine, as well as during the performance of the functions of the interpreter from the foreign languages during the meetings of the Prime Minister of Ukraine with the officials of the foreign countries". In such way, according to the investigation, he *"assisted in carrying out the subversive activities against Ukraine, creating the conditions for the activity of the foreign intelligence bodies on the territory of Ukraine, and by choosing the candidates for "recruitment"* among the government officials of Ukraine.

Let us note that such approach to the qualification of the high treason in the form of information transfer to a foreign state lacks the clear criteria of which information exactly assists the foreign state in carrying out the subversive activities against Ukraine. And this issue is decided by the investigators at their own discretion, not the law. In our view, such approach is arbitrary and thus unacceptable, it clearly does not meet the requirement of the European Court on the clarity and predictability of the law on which the restriction of the freedom of expression is based. Among the sentences of this group there are several more which qualify the transfer of information which, in the investigation's, and later the court's opinion, harms the defence but does not constitute the state secret, as a high treason.

For example, such is the sentence delivered on 15 October 2019 by Krukiv District Court of Kremenchuk city of Poltava district, in which the collection and transfer to the representatives of FSS of RF in 2014-2019 *"of the information on the development of the social and political, social-economic and military situation in Poltava region and in Ukraine in general"* was qualified as high treason. In particular, the accused transferred *"to the representatives of the foreign special service the files «Zvit Dlya OMVK 2019.docx» (Report for OMMC), «Mob.rozp.; ATO (04 03 2019).docx» (Mobile dislocation ATO 2019); «Spysok ofitseriv zapasu prypysanykh do inshykh viyskovykh comisariativ.docx» (The list of officers of the reserve assigned to other military comissariats); «Spysok ofitseriv zapasu prypysanykh do Kremenchutskogo OMVK. DOCX (The list of the reserve officers assigned to Kremenchuk OMMC); «Spysok soldat serjantiv prypysanykh do Kremenchukskogo OMVK.DOCX» (The list of soldiers and sergeants assigned to Kremenchuk OMMC); «Spysok soldat serjantiv prypysanykh do inshykh viyskovykh comisariativ.docx» (The list of soldiers and sergeants assigned to other military comissariats), which contained the information about the persons who worked at PAT «JT International Ukraine» and were on the military register at the military commissariats of Ukraine, including the participants of hostilities, as well as the list of reserve officers, soldiers and sergeants, who are on the military register in PAT «JT Ukraine» and have a mobilization order". According to the findings of the expert on state secrets, Deputy Head of the General Staff of the Armed Forces of Ukraine, "according to the set of data defined in the information notices, the information contained in the documents given to the representatives of the foreign special service constitutes the official information of the Armed Forces of Ukraine, falls in the sphere of action of paragraphs 3.2 and 3.37 of the List of information of the Armed Forces of Ukraine that constitutes official information, approved by the Order of the General Staff of the Armed Forces of Ukraine of 22.11.2017 No. 408". Given "the nature and high level of social danger of the crime he committed against the foundations of the national security of Ukraine"*, the panel of judges imposed a sentence of 12 years of imprisonment. Thus, for the five years of communication with the representatives of FSS, the details of which are not provided in the sentence, the accused transferred the documents defined as official information, he is not charged with anything else. In our view, the qualification of actions of the accused under Article 111 of the CC of Ukraine is erroneous.

The qualification of the actions of the village school principal under Article 111 of the Criminal Code of Ukraine is questionable in the sentence delivered on 25 September 2014 by Khalanchak District Court of Kherson oblast. He was accused of telling his friend, an officer of the communications department of the headquarters of the Black Sea Fleet of the Russian Federation in a phone conversation in March 2014, the data *"on location and relocation of military units and formations of the Armed Forces of Ukraine on the territory of Kherson oblast, the level of their battle readiness, the number of personnel, type and quantity of the weapons"*. The accused pleaded not guilty, stating that *"all his conversations with his friend had a domestic nature and the information that he told was known to everyone"*. It is interesting that the court, while defining the punishment in the form of 12 years of imprisonment, released the accused from custody under personal undertaking before the sentence came into force.

The last case of this category which has to be mentioned is the one in which there was the only full acquittal. In the case it turned out that the person accused of collecting secret information and transferring it to FSS of RF committed all his actions under the control of the representatives of SSU, and that the information that was transferred was manipulative and misleading. However, it did not prevent other SSU employees who watched the accused from detaining him with the application of the special means and conducting the investigative actions at once without calling the lawyer. The accused spent almost two years in SIZO before verdict was delivered.

Court decisions concerning the actions directed at harming the sovereignty, territorial integrity and defence of Ukraine

9 court decisions of this category are diverse: they concern the support for separatist movements, self-proclaimed Donetsk and Luhansk "people's republics" and the aggression of RF, protests against mobilization and other actions.

Thus, the leader of the Rusyn separatists, Petro Getsko, who was posing as the Prime Minister of a virtual country "Republic of Subcarpathian Russia" and the coordinator of the so-called "Network Rusyn Movement" and "Rusyn Front" received in absentia 12 years of imprisonment. The sentence, delivered on 30 September 2019 by Mukachevo interdistrict court of Transcarpathia oblast, states that Getsko appealed *"on behalf of the Rusyn of Zakarpatya to the President of RF asking to carry out a peacekeeping operation, to restore and recognize the statehood of the Republic of Subcarpathian Russia"*. In a number of his speeches and interviews he spoke of a violent change of government in Transcarpathia.

Two residents of Ternopil were recruiting people to fill the ranks of illegal armed formations in the so-called "DPR" and "LPR", offering a great reward, publishing fake news in social networks about the "atrocities of the fascists" and performing other actions. They were sentenced to 15 and 14 years of imprisonment.

Ruslan Kotsaba, a journalist from Ivano-Frankivsk, publicly protested against mobilization in January 2015. On 12 May 2016 Ivano-Frankivsk city court delivered the verdict in his case. Ruslan Kotsaba was accused of committing crimes provided for in pt.1 of Art. 111 of the CC of Ukraine (high treason) and pt.1 of Art. 114-1 "Obstruction of legal activity of the Armed Forces of Ukraine and other military formations".

The court found Kotsaba not guilty of high treason and acquitted him under Art. 111 of the CC of Ukraine for lack of corpus delicti. At the same time the court found his guilt under Article 114-1 proven and sentenced him to 3 years and 6 months of imprisonment. This case is examined in more detail in a separate publication.

One case is somewhat different from other cases of this category: the sentence states that the defendant, a Major, a military pilot, *"was recruited by his close relative on behalf of the representatives of the secret service of the Russian Federation and was tasked by them to hijack the plane assigned to him, SU-24 MR".* That he tried to carry out his criminal intent during the reconnaissance flight near the border with RF, but did not finish it. *"He notified the representatives of the special forces of the Russian Federation about the route of the flight which is a secret information, as well as about the impossibility of hijacking the plane".* The defendant pleaded not guilty. He explained that his wife and child were kidnapped and brought to RF, and he agreed to hijack the plane on the condition that they will be returned home, but he was not going to hijack the plane, deliberately imposing on the Russians the demands that could not be fulfilled. The court delivered the punishment in the form of 12 years of imprisonment. The validity of the sentence is questionable.

Also questionable is the sentence in the case in which the defendant agreed to kidnap a resident of RF and bring him to Russia to transfer him to FSS. However, he did not manage to carry out the plan, since he was detained by SSU. While the qualification of the actions of the defendant under Article 146 of the CC of Ukraine is correct, it is not clear why those actions are qualified as a "high treason".

Another case seems simply fictional because of its overall weirdness. The sentence in this case was delivered on 27 January 2019 by Krasnoguardiysky district court of Dnipropetrovsk oblast. According to the plot of this case, an expert from Federal Information Centre "Analytics and Security" in Moscow has developed *"a long-term plan (algorithm) of successive actions, directed at harming the sovereignty and informational security of Ukraine, which was given the code name "Vector" in order to comply with the requirements of the conspiracy of the unlawful activity. By its nature and contents the plan was a clear sequential algorithm of actions of various groups of people which had specific criminal actions distributed among them and the duties of performing the relevant activities united by a single criminal intent to organise the subversive activity against Ukraine". According to that plan, "at the infrastructure objects and in public places of the specified cities of the Russian Federation the specially involved residents of Ukraine from among the ATO members had to perform a predetermined set of measures under the guise of builders which by its nature must look like the preparation for performing the construction and repair works, however, with appropriate coverage and comments in the media would have signs of a preparation for committing a crime against the national and public security of the Russian Federation. In particular, the above-mentioned complex of activities provided that the involved residents of Ukraine under the guise of builders should visit the public places and objects of infrastructure (subway stations, railway stations, airports etc) of the Russian Federation, carry out their fixation with technical means (photographing, video recording), perform conversations with specific subscribers of phone services and perform other activities which under the guise of preparation for construction and repair work would bear the signs of preparation for performing an explosion. According to the defined criminal plan, subsequently, after the activity of those residents of Ukraine is found out by the law-enforcement bodies of the Russian Federation, it would be covered in the mass media of the Russian Federation as unlawful activity, as well as the one which is directed at causing*

grievous consequences in the form of death of people and causing material harm, it would serve as justification for the representatives of the Russian Federation to accuse Ukraine of the preparation of the terrorist acts or sabotage against the Russian Federation".

The sentence subsequently describes an almost detective story of how this Russian expert recruited two Ukrainian nationals, a man and a woman, to carry out that plan, and they, in their turn, offered three former ATO members to go to Russia and work as builders for good payment. They agreed and left, but at the last moment they guessed the criminal intent and contacted the Ukrainian special service which prevented the planned crime. The recruited man and woman pleaded guilty, repented, signed plea agreement with a prosecutor and were released from custody in the courtroom, as a result their actual served sentence was 2 years, 4 months and 11 days od imprisonment.

Other cases

We included in this category two cases which were examined in absentia and about which much has been written. One sentence concerns Victor Yanukovych, a former President of Ukraine, the second sentence – Oleg Belaventsev, a Russian, Vice Admiral of the Navy of the RF Armed Forces in retirement, who called himself during the annexation of Crimea "The representative of the president of the Russian Federation in Crimea". The latter raises questions, how a resident of RF can be brought to responsibility for Article 111 of the CC of Ukraine, when the Article clearly states that the high treason is an act wilfully **committed by a citizen of Ukraine??**

Conclusions

The analysis of the criminal proceedings concerning the crimes, committed under Article 111 of the CC of Ukraine in 2014-2019 shows that they are investigated very slowly: the notice of suspicion is handed down only in **37.7%** of the total number of recorded criminal proceedings, and the bill of indictment is directed to the court only in **33%** of the proceedings in which the notice of suspicion was handed down. That said, only **7.6%** of the proceedings are closed, and the number of proceedings concerning which the decision on closing or suspending them is not taken is **64.1%**.

The first-instance courts delivered **34 sentences** in six years. The analysis of those decisions shows that the qualification of the crimes as high treason was often questionable and even incorrect. The courts sometimes tried to rectify those errors of the pre-trial investigation. Thus, in four cases the accusation under Article 111 was found unproven and the defendants were acquitted under that Article.

The judicial practice has shown that the transfer of information to a foreign country or organisation was also interpreted as assistance in subversive activities against Ukraine in the cases when the information did not contain a state secret. In our view, the qualification of the transfer of information as high treason is only possible in the case of transfer of secret information, since the discretion in the qualification of a crime for the information which is not a state secret is too wide.

Out of 8 sentences delivered in the special court proceedings in absentia, in our view, only one can be considered correct, 7 others are striking and unlikely to stand allegations of violations of the right to fair trial before the European Court for Human Rights if such allegations are well-founded.

Criminal proceedings under Article 111 of CC of Ukraine against the journalists

We are aware of four criminal proceedings in which the journalists were accused of treason in connection with the performance of their professional duties. Let us examine those proceedings separately.

The case of Ruslan Kotsaba

On 17 January 2015 Ruslan Kotsaba, a journalist from Ivano-Frankivsk, posted a video appeal to the President of Ukraine titled "Internet action "I refuse the mobilization" on his personal page on Youtube video hosting. In that appeal Kotsaba introduced himself as a journalist from "112 Krayina" (112 Country) channel (although his contract with the channel had expired by then) and publicly urged "all adequate people" to refuse the mobilization which was declared contrary to the current legislation of Ukraine. It should be noted that Kotsaba was removed from the military register in 2006, when he reached the age of 40, and he was not subject to mobilization. He could only be mobilized after filing a personal appeal which he did not submit to the district military registration and enlistment office.

The video appeal was declared on the very day when Verkhovna Rada of Ukraine adopted the law "On approval of the Decree of the President of Ukraine "On partial mobilization" of 15.01.2015 No.113-VIII. Another wave of partial mobilization began on 20 January 2015.

After that Kotsaba gave interviews to several Russian and Ukrainian media, in which he expressed his position, declared in the video appeal. Thus, he participated in the "Pryamym Textom" ("Direct Text") program titled "Mobilization and all worries related to it" on "ZIK" TV channel, which aired on 22 January, where he confirmed his position concerning the public urging to refuse the mobilization and pointed out that he posted the examples of applications to refuse the mobilization on his internet pages for their dissemination and use among the compatriots. On 22 January Kotsaba directly participated via Skype in the "Vremya Pokazhet" ("Time will tell") program of the Russian "Perviy Kanal" ("First Channel") TV channel, where he commented on his video appeal, confirming the urging to refuse the mobilization, and characterized the events transpiring ion the East of the country, as a civil war.

On 23 January Kotsaba already arrived in Moscow, where on that day he participated in the studio of "Rossiya 1" (Russia 1) channel in live program "Spetsialniy Korrespondent" (Special Correspondent). Some participants of the program accused Ukrainian authorities of the deliberate destruction of the Ukrainian population during the hostilities and denied the presence of Russian military units in Donbas. On 25 January in Ivano-Frankivsk Kotsaba participated via Skype in the TV program "Tsentralnoye Televideniye" (Central Television) of the Russian TV channel "HTB", in which he commented on his video appeal "I refuse the mobilization" and stressed to the potential mobilized persons that they may have to kill the same Ukrainians living in another part of the country.

While in Moscow, Kotsaba agreed with a journalist of the Russian TV channel "HTB" on the preparation of reports with the participation of the residents of Cheremkhiv village of Kolomiysky district of Ivano-Frankivsk oblast, who express their opinion against the mobilization and do not wish to go to war, as well as the reports of a similar nature in Ivano-Frankivsk. It was agreed that he would seemingly prepare the reports of the protest nature on his own initiative, and not after the order of a Russian channel, and he would post them on YouTube providing the permission to use them to unrestricted circle of persons. Kotsaba was to receive monetary reward for this work. On 1 February Kotsaba was filming the reports in Cheremkhiv and Korshiv villages of Kolomiysky district, and then uploaded them to YouTube.

On 7 February Kotsaba was detained, he was notified of suspicion of treason and obstruction of legal activity of the Armed Forces of Ukraine and other military formations (pt. 1 of Article 111 and pt. 1 of Article 114-1 of CC of Ukraine).

Earlier, in May-June 2014, Kotsaba as a special correspondent of "112" channel visited the ATO zone, where he filmed many videos about the voluntary battalion "Aydar" and the war. He visited the self-proclaimed "LPR" once during the week, having received accreditation from the press service of the Luhansk Regional State Administration. He filmed and posted on Youtube on 20 June the video called "Ruslan Kotsaba from Luhansk Regional State Administration", in which he accused Ukrainian military of murder of peaceful population near Luhansk RSA and called the militants of the "LPR" and "DPR" "military" and "heroes". In Kotsaba's opinion, the occupation of Luhansk RSA was carried out by the local residents similarly as during the Revolution of Dignity the local residents occupied the premises of Ivano-Frankivsk Regional State Administration, however, the occupation of RSA in Ivano-Frankivsk was for some reason called "extreme measures of revolutionary and patriotic attitudes of the residents", which were later subject to amnesty, and the persons who occupied Luhansk RSA were called "militia members" and "criminals".

After his return from ATO zone, in late June 2014, Kotsaba gave interview to the channel "112 Ukraina" (112 Ukraine) and on 13 July 2014 to the Russian channel "Rossiya 24" (Russia 24) concerning his stay in Luhansk, during which he again accused Ukrainian military of killing peaceful population, noted and praised the high discipline of the local militia men of "LPR" and their motivation, as well as denied the presence of Chechens among them.

On 12 May 2016 the sentence was declared. The court found Kotsaba not guilty of treason and acquitted him under Article 111 of CC of Ukraine for the lack of constituent elements of a crime. At the same time, the court found guilt under the Article 114-1 and sentenced Kotsaba to imprisonment for 3 years and 6 months, applying the Article 69 of CC of Ukraine, and calculated 1 day of Kotsaba's stay in SIZO for 2 days of the sentence, therefore, of 3.5 years Kotsaba had one year left to serve.

In our opinion, Ruslan Kotsaba's actions, undoubtedly deserve moral condemnation. His reports are one-sided and manipulative. Especially the statement that mostly people from Western Ukraine die in the East. It is hard to believe that he did not lie while denying the participation of Chechens in the hostilities on the side of the self-proclaimed "DPR" and "LPR". Similarly, in January 2015 he could not be unaware of participation of the Russian conscripts in the hostilities in the East of Ukraine and the use of Russian weapons by the militants of the self-proclaimed republics, however, he kept silence when the participants of the TV programs in Moscow denied this in his presence. If, according to the standards of the fair journalism, he covered in good faith the events in the zone of the military conflict, the data concerning the participants of the hostilities and their weapons should have been well known to him. Thus, he acted as a propagandist deliberately twisting the information, i.e. having an evil intent rather than a journalist.

However, instead of publicly refuting his unreasonable statements in open talk, he was accused of serious crimes and imprisoned, since 8 February he was in SIZO. It led to the criticism by the Western politics and civil organisations, such as, for example, Amnesty International, which called Kotsaba a prisoner of conscience, meaning a person who was imprisoned for expressing his own thoughts, although he did not commit any crime.

Stylistically, the prosecution of Ruslan Kotsaba is a typical political prosecution: groundless accusation of state treason, lengthy detention in SIZO. However, it is hard for us to agree with the qualification by "Amnesty International". If the legislation of Ukraine had more refined forms of qualification of the actions of the journalists which had evil intent as a crime, Kotsaba would fully deserve such qualification.

Is it adequate to qualify Kotsaba's actions as a crime under Article 114-1? The verdict looks convincing. However, the very fact of the presence of Article 114-1 in the Criminal Code of Ukraine is a problematic issue. At that moment we de-facto had an armed conflict in the South-East, de jure – anti-terrorist operation. If Ukraine had the state of martial law instead of obviously inadequate definition of actions of Ukrainian military and other military formations as ATO there would have been no need to introduce the concepts of "special period", and the introduction of Article 114-1 to CC would not be necessary. And, with a great probability, Ruslan Kotsaba would not have urged the people to refuse mobilization. Because all his previous life proved that he was a patriot of Ukraine, as he maintained in the court. He is an active participant of the civil movement since 1988, an activist of "Memorial", environmental organisations, a participant of all three Ukrainian revolutions – student hunger strike of 1990, Orange Revolution and the Revolution of Dignity. In our opinion, in spring 2014 he genuinely believed the war to be a civil and fratricidal one, but later he could not help but understand the main reason for that war: the wish of the administration of the Russian Federation to break the Ukrainian state, or, at least, to not let us live and develop normally. Kotsaba was failed by his constant wish to shock the public, his affection to provocation, and he did not notice himself turning into a stranger who insults the deceased. However, he did not feel this metamorphose and behaved provocatively, flaunting his definition as a prisoner of conscience. Although it is necessary to admit that the punishment in the form of lengthy detention is too cruel and inadequate to his actions, and according to the international standards he has to be defined a political prisoner: first, the motives of his criminal prosecution are political, second, the actions of the State bear the signs of violation of the right to freedom (Article 5 of the European Convention) and the freedom of expression (Article 10).

Article 5 is violated in Ukraine in almost every criminal proceedings, when a preventive measure in the form of detention is chosen, and Kotsaba's case is not an exception. As for the Article 10, we would like to note the following. Generally speaking, the European Court believes the detention to be the extreme measure of punishment for a crime. The first part of Article 114-1 declares that "obstruction of the legal activity of Armed Forces of Ukraine and other military formations in the special period is punishable by imprisonment for the term between 5 and 8 years". In our opinion, this norm does not meet the criteria of the European Court of Human Rights concerning the clarity and predictability of the law on the grounds of which the freedom of expression is restricted. In particular, it is hard for a journalist to foresee that he would be punished under that article for his professional activity, since the European Court consistently finds a violation of Article 10 of the Convention in the imprisonment of journalists for performing their professional duties, believing such intrusion in the freedom of expression to be out of proportion.

Thus, the State should stop criminal prosecution against the journalists with their detention for the things they write (say, film) when there are no grave consequences. As for Kotsaba – as a political prisoner, he should be released as soon as possible. .

Such commentary to the sentence was published by us a week after it was declared. And on 14 July 2016 the panel of judges from Appellate Court of Ivano-Frankivsk oblast declared the ruling, which terminated the criminal proceedings under Article 114-1 of the CC of Ukraine for the lack of constituent elements of a crime in Kotsaba's actions and released him from custody in the courtroom.

On 1 June 2017 the ruling of the Higher Specialized Court for civil and criminal cases partially upheld the prosecutors' cassation, the decision of the appellate court was quashed on the procedural basis and a new trial in the appellate court was assigned. The cause was that *"the appellate court unreasonably refused to grant the petition of the prosecution concerning the examination of the evidence during the hearing, including the audio record of the court hearing of the district court in the part concerning the questioning of the accused and all witnesses. The appellate court did not study the testimony of the witnesses directly and provided the opposite assessment of the statements than the one provided by the trial court"*.

Thus, the courts began examining the accusations under both articles of CC anew. More than 3.5 years passed, the legislation changed, now the courts are guided by the concept of "armed conflict" and not ATO, and the examination of the criminal proceedings against Ruslan Kotsaba is still ongoing. Now the case is being heard by Kolomiysky city district court of Ivano-Frankivsk oblast.

The case of Andriy Zakharchuk

Andriy Zakharchuk is a young Ukrainian journalist who as far back as in 2012, being 22 years old, began working in St. PeterSSUrg in news agency "Nevskie Novosti" ("Neva News"), later – in Russian Federal News Agency. In January-February 2015 he visited Kyiv, Kharkiv, Odesa, Dnipropetrovsk, made reports and took many photos. After that he arrived to Mykolayiv, where he once again took many photos, in particular, of Ingulsky and walking bridges, shipyard named after 61 Communards and SE "Mykolayiv Armor Plant", the employees of security service of the latter detained the journalist during the filming. Those two plants are strategic objects included in the State Concern "Ukroboronprom".

On 10 February Zakharchuk was detained by SSU, he was accused of state treason and on the next day he was placed to a SIZO. The journalist's laptop, tablet and camera were confiscated. The prosecutor notified that the journalist's devices contained the correspondence which confirmed his affiliation with a Russian news agency. Zakharchuk was not hiding that.

The investigation accused the journalist of working for the aggressor state. It was stated that the Federal News Agency is a propaganda publication which distorts the facts about Ukraine, creates a mistaken opinion on the events in Ukraine and incites separatist sentiments among Ukrainians. So the suspicion which Zakharchuk was notified of on 11 February was "justified".

In our opinion, on the contrary, the accusation is not convincing. The legislation does not prohibit to work for Russian media. Taking photos on the streets is not prohibited, either. The suspect himself stated that he did not send photos to Russia and was not going to do that. According to him, he did not know that it was not allowed to photograph the armour plant and Ingulsky bridge. The prosecution did not provide any fact of publication by Zakharchuk of the materials directed against Ukraine, his collection of information aimed against national security of Ukraine. There are hundreds of photos in the internet similar to the ones taken by Zakharchuk. Thus, it seems that the prosecution considers the mere fact of working for the Russian Federal News Agency a criminal act.

Literally in 10 days Zakharchuk agreed to participate in the exchange for the Ukrainian prisoners of war along with the militants, and thus on 21 February he was released from SIZO and left Ukraine. At the same time, the SSU officials later stated that his accusation was not lifted, his prevention measure was merely changed, and that he is allegedly hiding from justice. On 3 March in the interview to "Svoboda" (Freedom) radio Zakharchuk stated: "They gave me a paper to sign, that I want to be exchanged. They said that I don't have any other choice". That the brand of a traitor was unacceptable for him and very unfortunate. And that the statements of SSU were ridiculous. "In order to include me in the exchange lists, there must be a signed amnesty, that all accusations are lifted. I have signed such application. The SSU employees brought me to Kramatorsk, where the exchange took place. It turns out, they helped me escape to Russia?"

The case of Vasyl Muravytsky

On 1 August 2017 SSU detained a 36-year-old blogger and journalist from Zhytomyr, Vasyl Muravytsky, and searched his house. He was accused of preparation and dissemination of materials of anti-Ukrainian content instructed by news resource "Russia Today". The chosen preventive measure was the detention. Muravytsky was accused of committing crimes under four articles of CC of Ukraine: pt. 1 of Article 111, pt. 2 of Article 110; pt. 2 of Article 161 (deliberate actions directed at inciting the ethnic, racial or religious enmity) and pt.1 of Article 258-3 (participation in a terrorist group or organisation).

The notice of the SSU (unfortunately, it was removed from SSU's site) stated that its employees have stopped the activity which threatened informational security of the state in Zhytomyr oblast. It was established that a journalist referred to as "information mercenary", "between 2014 and October 2016 published biased propaganda publications under the guidance of the Russian news agencies", receiving topics and desired contents by mail or by courier, and sometimes he was allowed to choose a topic. He allegedly received payment via the international online payment services. His materials were published on six web sites controlled by the Russian Federation and the groups acting on non-government-controlled territories of Ukraine. SSU states that in the first publication the author signed his real name, but subsequently resorted to only using his nickname. "Language and forensic psychological examinations of the texts confirmed their manipulative influence on the awareness of the readers and motivating the audience to take specific actions for infliction of harm of the sovereignty and independence of Ukraine". According to SSU, the expertise found that semantic and linguistic content "also contained calls for the national enmity within Ukraine and between Ukraine and neighbouring allied countries.

"Ukrayinski Novini" published the notice of suspicion which was given to Muravytsky. He is suspected of preparation of the publications in which he negatively covered the activity of current state authorities and armed formations, and justified the legal nature and lawfulness of Russia's annexation of the Crimea, creation of the terrorist organisations "Donetsk People's Republic" and "Luhansk People's Republic". Furthermore, according to the investigation by SSU, Muravytsky expressed ideas on the need for illegal accession of certain regions of Ukraine to Poland and Romania.

International news agency "Russia Today" is funded by the state and is a part of the Russian propaganda machine which deliberately disseminates lies about the events in Ukraine (for example, about the tragic fire in Odesa on 2 May 2014 and hostilities in Donbas). But the mere fact of this does not make the agreement with the agency a proof of the state treason. That agreement cannot even be called illegal. It is still unclear whether the prosecution really has the proofs of the guilt.

The interviews with Muravytsky with Kremlin-supported site News Front could be easily found on YouTube YouTube. They are very controversial and they contain numerous manipulative and wholly unfair statements. But it is not enough to consider those publications the proofs of the crimes incriminated to Muravytsky. Concerning this criminal prosecution and its legal assessment it could be reiterated what was already said above concerning Kotsaba's case: in our opinion, Muravytsky's publications have a clear propaganda nature, they ignore and distort the facts, and it is made deliberately. But the reaction of the state in the form of lengthy detention and house arrest is disproportionate, the proofs of the state treason and other incriminated crimes are not visible.

However, it is too early to draw conclusions, it is necessary to wait for the sentence. The trial is ongoing for more than three years now, and there is no end, which indicates the doubtful nature of the accusation.

It is not hard to see that the criminal prosecutions of Ukrainian and Russian political prisoners who maintain that Crimea is Ukraine and oppose Russia's armed aggression, also contain the same accusations of the state treason. This mirroring indicates a certain similarity in the attitude of two states to their opponents.

Muravytsky's detention caused numerous protests of the western human rights organisations protecting the freedom oif speech – "Reporters without borders", New York Committee to Protect the Rights of Journalists and many others who demand Muravytsky's release and ending the division of journalists into patriotic and non-patriotic. "Amnesty International" considered Muravytsky a prisoner of conscience.

On 27 June 2018 the court replaced the detention with round-the-clock house arrest, then gradually eased the house arrest regime, and on 2 July 2020 replaced house arrest with personal undertaking.

The case of Kyrylo Vyshynsky

Since 2014 Kyrylo Vyshynsky, a journalist, headed the agency "RIA Novosti Ukraina" (RIA News Ukraine), which had been registered as an independent legal entity.

On 15 May 2018 the SSU employees searched the office of «Ria Novosti» and Vyshynsky's flat. During the search they found the passport of the resident of RF which was handed to Vyshynsky in 2015. They also found the Russian state awards, including two orders and medals. Kyrylo was handed notice of suspicion under Article 111 of the Criminal Code. On 16 May 2018 Kyrylo Vyshynsky was brought to Kherson, where the court chose the preventive measure for him in the form of detention.

As the Wikipedia states, in spring 2014 Vyshynsky worked in Crimea, where he and the journalists subordinate to him produced the materials which justified the temporary annexation of Crimea by Russia. For this activity Vyshynsky by a closed decree of the President of Russia was awarded an order "For the Return of Crimea". He was also awarded a Russian order "For services to the Fatherland" for the so-called "objective coverage of the events in Crimea". According to SSU, after returning to Kyiv Vyshynsky with several other journalists deployed active work on the information support for the terrorist organisations "LPR" and "DPR". Each month to continue such activity Vyshynsky received EUR 53 000, in total SSU estimates Vyshynsky's monthly funding by RF as EUR 100 000. The costs came from the territory of Serbia, and there – from the RF. Vyshynsky registered several legal entities for the transfer of costs and for masking of their Russian source.

The publication "Detector Media" describes the articles by Vyshynsky the following way: "There are several materials by Vyshynsky co-authored by **Zakhar Vinogradov** (ex-head of «RIA Novosti Ukraina», from Odesa) on «RIA Novosti» site for 2014. In August sketches from Donetsk they were excited by the militants, calling them "amazing rebels", which are ready to *"without fuss and unnecessary emotions accept a dignified death of the defender of their homestead"*.

The authors masterfully knitted into their text the romantic images of the leaders of "DPR", **Oleksandr Boroday** and **Olexandr Zakharchenko**, and even the skies over Donbas they saw as being "Novorussian" and not Ukrainian. On the same year Vynogradov and Vyshynsky legitimized and advertised the odious persons through interviews. They record the conversation with the "DPR"-appointed "mayor of Makiivka", in which they praise his managerial skills. Consequently that duo of the authors will publish the conversations with **Igor Guzhva**, who is now hiding from Ukrainian court in Austria, and **Leonyd Kozhara** – an ex-Regional, Minister of the Ministry of Foreign Affairs of Ukraine under Yanukovych. The headline for the latter interview can characterize the works by Vynogradov-Vyshynsky: *"To be enemies with Russia is absurd"*. In 2017 SSU prohibited Zakhar Vynogradov from entering Ukraine".

The trial in Vyshynsky's case started on 4 April. According to Ukrinform, the prosecution accused him of posting **72 articles** of "anti-Ukrainian nature" in 2014-2018. According to the prosecution, those materials contained *"unreliable, subjective, biased information concerning Ukraine, Ukrainian authorities and army and refuted Russian aggression against Ukraine. The prosecution also believes that those materials "justified possible withdrawal of some regions of Donetsk and Luhansk oblasts from Ukraine".*

Vyshynsky objected: *"For more than four years of me heading the editorial house of «RIA Novosti Ukraina» there was no court claim, demand to refute the provided information or claims about the lack of objectivity. Therefore, I consider unproven the accusations by SSUof the fact that since the first day of my work as the editor-in-chief, since March 2014, I systematically and purposefully published on the site the information which was unreliable or lacked objectivity – there is no evidence whatsoever*".

There is no detailed information about what articles were in question. Although Vyshynsky's lawyer, **Andriy Domansky**, stated that it did not concerned the materials by his client, but by other authors that were published in the "Opinion" section.

In July there was an idea to exchange Vyshynsky for Oleg Sentsov. At first Vyshynsky refused the exchange, believing that it would mean pleading guilty, and he pleads innocence, but later he agreed. On 28 August 2019 the court replaced the preventive measure with personal undertaking, and on 7 September Vyshynsky left for Moscow within the exchange procedure.

Conclusions

Unfortunately, those cases show that any critical statements concerning the actions of Ukrainian authorities can be considered a state treason in SSU. This will undoubtedly have a cooling effect on journalism and will contribute to intensification of self-censorship. We have to state that the balance between the interests of the national security and observance of human rights is decided by Ukrainian authorities in the favour of the national security. And this only benefits the Russian aggressor. The state is reverting to the Soviet stylistics when it persecutes the journalists in such a way. It turns out that during the war criticizing the government is prohibited. It is not allowed to write for the Russian editions, because you are at risk of being called a criminal. Although it should be clear that it is necessary to prove Ukrainian position in Russia, using all adequate means.

The legislation does not prohibit the cooperation with Russian media. However, it is necessary to keep to the standards of the journalism, and not be a propagandist and write ordered materials. However, the example of the criminal persecution of Zakharchuk proves that there are no guarantees against accusation of the state treason. The question is – where in Ukraine ends the freedom of expression and starts the state treason? The boundary between them is not defined. Therefore. it is not surprising that two accused persons were exchanged, and the examination of cases of two more accused lasts for more than 3.5 years.

Drawing this boundary is a very difficult task. Part of society is positive about the persecution of Ukrainian journalists who in fact turned into propagandists and promote the ideas of the aggressor state in Ukraine. Indeed, it is hard to tolerate such propaganda in the conditions of the armed conflict. However, the accusations of state treason are inadequate legal means. In our opinion, it is appropriate to introduce in the Ukrainian legislation the concept of "evil intent" and the procedures that establish its presence similar to the ones existing in USA, keeping in mind at the same time the position of the European Court of Human Rights concerning the proportionality of the restriction of the freedom of expression.

03 INVESTIGATION OF INDIVIDUAL TERRORIST CRIMES

In 2013 there were only **4 criminal cases** in the SSU proceedings concerning the terrorist acts. In 2014-2019 the investigators from SSU most often used Article 258 of the CC of Ukraine (terrorist act) and Article 258-3 of the CC of Ukraine (the creation of a terrorist group or a terrorist organisation) for qualification of terrorist crimes. Thus, according to the site of the Prosecutor General's Office of Ukraine, **5644 criminal proceedings** were registered under Article 258 in 2014-2019, in **130 cases** the notices of suspicion were given, **65 proceedings** were sent to court with the bill of indictment. **1875 criminal proceedings** were registered under article 258-3, notices of suspicion were handed in **932 proceedings**, **301 proceedings** were sent to court with the bill of indictment.

Most of the crimes qualified under Article 258 concerned the actions of the members of illegal armed formations in the context of seizing control over the parts of Donetsk and Luhansk oblasts and subsequent armed conflict. Before 2018 the Government of Ukraine had not recognized directly the presence of the armed conflict in the East of Ukraine, officially naming it the anti-terrorist operation. Accordingly, many crimes committed in the context of the armed conflict in the East of Ukraine are wrongly qualified as terrorist acts according to the relevant legislation, and this explains such a great number of criminal proceedings under article 258, in which investigation did not actually take place.

For example, in 2016-2017 the lawyers from Kharkiv Human Rights Protection Group sent many requests for opening criminal proceedings, forcing SSU to open **263 criminal proceedings** concerning the facts of death or injuries of civilians in the government-controlled territory, the destruction of homes and other property due to the shelling etc. Despite those requests, the investigative actions were not taken and the investigation was inefficient. The investigators refused to provide the victims of the crimes with the official victim status, thus denying them and their lawyers the access to case file materials on pre-trial investigation stage. Furthermore, the necessary investigative actions were not taken, such as examination of the scene of a crime, collection of the witnesses' evidence, and, in case of requests for carrying out the necessary investigative actions, the investigators either did not react, or only carried out individual investigative actions (often through redirecting those requests to other bodies of investigation). Furthermore, no special investigative actions concerning the hostilities were carried out (such as determination of the direction, distance and effects of the shelling; types of used weapons/military transport etc). As a result, after exhausting all domestic remedies in **136 such cases**, the lawyers from KHPG filed the individual applications to ECtHR against Ukraine and Russia, explaining the violation of Articles 2 or 3 of ECHR by Ukraine's inaction.

A great number of criminal proceedings under Articles 258 and 258-3 of the CC of Ukraine requires a long time for their thorough studying, therefore we would limit ourselves with the general observations.

The analysis of the criminal proceedings concerning the terrorist financing (Article 258-5) and the financing of the actions committed for the purpose of the forcible change or overthrow of constitutional order or seizing of state power (Article 110-2) is relevant and provided below.

The practice of application of Article 258-5 of the CC of Ukraine

This article is worded in the following terms:

Article 258-5. Financing of terrorism

Article 258-5

01 *Financing of terrorism, i.e. acts committed with the purpose of financial or material support of an individual terrorist or a terrorist group (organisation), organisation, preparation or commission of an act of terrorism, involvement in a terrorist act, public incitement to commit a terrorist act, to facilitate the commission of a terrorist act, the creation of a terrorist group (organisation),- shall be punishable by imprisonment for a term of five to eight years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to two years and with forfeiture of property.*

02 *The same actions committed repeatedly or for selfish motives, or by a group of persons upon their prior conspiracy or on a large scale, or if they caused significant property damage, - shall be punishable by imprisonment for a term of eight to ten years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and with forfeiture of property.*

03 *Actions envisaged by paragraph 1 or 2 of this Article committed by an organised group or on a large scale, or if they caused other grave consequences, - shall be punishable with imprisonment for a term of ten to twelve years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and with forfeiture of property.*

04 *Person other than an organiser or leader of a terrorist group (organisation) is exempted from criminal liability for actions under this Article, if he/she voluntarily informed about appropriate terrorist activities or otherwise contributed to its suspension or prevention of crime, which it sponsored, or commission which has contributed, upon condition that his/her actions do not constitute another crime.*

Note

01 *Financing of terrorism shall be deemed as large if the amount of financial or material support exceeds 6000 tax-free minimum incomes.*

02 *Financing of terrorism shall be deemed as especially large if the amount of financial or material support exceeds 18000 tax-free minimum incomes.*

The summarized data concerning the investigation of the crimes qualified under Article 258-5 is taken from the site of the Prosecutor General's Office, and concerning the court decisions under that Article – from the Unified Register of Court Decisions, and compiled in the table:

Article 258-5 of the CC of Ukraine	2014	2015	2016	2017	2018	2019	Total
Criminal proceedings registered	48	93	72	60	45	192	510
Suspicions of crime handed	4	8	7	14	14	13	60
The number of proceedings sent to court with the bill of indictment	2	5	2	7	11	4	31
The number of petitions for release from criminal liability	1	1	1	4			7
The number of closed proceedings	4	29	13	2	5	17	70
The number of proceedings concerning which the decision to terminate or suspend them was not taken by the end of the year	43	84	66	47	33	25	298
The number of sentences delivered by first-instance courts	1	4	4	7	8	10	34

The small number of notices of suspicion is striking comparing to the number of the registered criminal proceedings – **11.8%**, by years: 2014 – **8.3%**, 2015 – no more than **8.6%**, 2016 – no more than **9.7%**, 2017 – no more than **23.3%**, 2018 – no more than **31.1%**, 2019 – no more than **6.8%**.

Individual sentences delivered by the courts are pretty strict. 11 sentences provided for the actual deprivation of liberty, one of them – arrest for 5 months, 2 sentences – 5 years of the deprivation of liberty without forfeiture of property, and 8 sentences with the forfeiture of property: 1 sentence – 15 and 14 years, 3 sentences – 10 years, 3 sentences – 8 years, 1 sentence – 5 years and 1 month of imprisonment. 13 sentences that provide for 5 years of imprisonment were delivered with a probationary period: in 10 of them the probationary period is 3 years, in 3 others the probationary period is 2 years.

In two sentences the punishment was in the form of fine with forfeiture of property: 20000 and 5900 tax-free minimum incomes, in 8 sentences – a fine without forfeiture of property, in the amount of 50000, 25000, 20000, 15000, 11800, 8800, 3000, 2500 minimum incomes. We would reiterate that those decisions imply that tax-free minimum income is UAH 17.

At the same time in **23 cases (67.6%)** the court approved a plea agreement with the prosecutor.

In **25 cases (73.5%)** the courts applied Article 69 of the CC of Ukraine – the application of a more lenient punishment than the one provided by the law (in **15** of those 25 cases the court approved a plea agreement with the prosecutor). Meanwhile in 21 a preventive measure in the form of detention was chosen for the time of investigation and trial, in 8 cases a preventive measure was not chosen.

5 cases were considered by the courts in the special court proceedings under Article 323 of the CCP of Ukraine in absentia. The presence of the applicants in those cases was purely formal (except one case): they were only mentioned in the part with the list of the participants of the procedure.

Annex 1 contains the short data on the delivered sentences – the dates of the sentences, court names, data from the operative part of the sentence.

The review of the court decisions under Article 258-5 shows that they can be divided into 4 groups.

In the first group (6 sentences) the defendants were punished for their support of the terrorist organisations "DPR" and "LPR" through the transferring or sending their own money or other items. Thus, an engineer from Zaporizhzhia NPP transferred UAH 3350 to his separatist friend in LPR, another defendant transferred UAH 3250, and yet another – UAH 30 000. From their own savings. Another defendant acquired medicines and items and sent two parcels through "Nova Poshta", weighing 10 and 7.5 kilos.

One case, in our opinion, ended up in this category due to a misunderstanding. The sentence in it was delivered on 17 November 2017 by Kominternivsky District Court of Odesa region, a plea agreement with the prosecutor was approved and the defendant received punishment with the application of Article 69 of the CC of Ukraine, under pt. 1 of the Article 258-5 of the CC of Ukraine – 5 years of imprisonment with 2 years of probation for such offence.

"In May 2014, a more accurate date was not established by the pre-trial investigation, the defendant, PERSON_1, being aware of the fact of anti-terrorist operation on the territory of Luhansk region and of the participation of PERSON_3 in the armed opposition to the lawful actions of the officers of the law-enforcement bodies of Ukraine and members of Armed Forces of Ukraine on the territory of Luhansk region and PERSON_3's intent to continue his criminal activity, being at the place of registration and former residence of PERSON_3 at the address: ADDRESS_2, acting with the purpose of material provision of an individual terrorist – PERSON_3, received from his mother, PERSON_4, who was not aware of his criminal intent, the following items: a belt, a shoulder-belt, camouflaged jacket and pants (coloured flecktarn-d), a flask.

Subsequently, PERSON_1 with the purpose of material provision of PERSON_3, at his own expense sent the above-mentioned items via the post operator "Nova Poshta", from Department No. 13, which is located at the address: Odesa, Semena Paliya st. (former name – Dnipropetrovsk road), building 82, to PERSON_3 in Lutuhine town of Luhansk region, which at the time was not controlled by the Ukrainian government.

Being a member of the "special division of Luhansk people's liberation battalion «Zarya» of the Ministry of Defence of the terrorist organisation «Luhansk People's Republic» since June 2014, PERSON_3 used the above-mentioned military uniform and items sent by PERSON_1 during the armed opposition to the lawful actions of the members of the

law-enforcement bodies of Ukraine and Armed Forces of Ukraine involved in ATO on the territory of Luhansk region, as well as other crimes as a part of IAF of the terrorist organisation "LPR".

Thus, Person_1 is reasonably accused of the criminal offence (crime), envisaged by pt. 1 of Art. 258-5 of the CC of Ukraine, namely the financing of the terrorism, meaning the actions committed with the purpose of material provision of an individual terrorist".

In the second group there are 7 sentences, they were delivered for the establishment of financial institutions for serving the residents of the temporarily occupied territories. For example, here is a fragment of such sentence:

"Furthermore, in August 2015 PERSON_1 in Luhansk, being aware that "LPR" commits terrorist acts on the territory of Ukraine, performs armed opposition to the law-enforcement bodies and Armed Forces of Ukraine, directed at the change of the territorial borders and state control in unlawful way, decided to provide financial support for criminal activities of the above-mentioned terrorist organisation. Subsequently PERSON_1, knowing of the deficit of cash on the financial market of the temporarily occupied territory of Luhansk region, the absence of the banking institutions of Ukraine and the problems with provision of the participants of the terrorist organisation "LPR" with the necessary cash, deliberately created on the territory of Luhansk city a financial institution of the terrorist organisation "LPR" – a non-banking commercial firm «ROSFINGROUP», which is located in the regional centre on Gradusova st., 4/132. At the same time PERSON_1 with the purpose of creation of a fictional financial welfare and stability on the territory temporarily controlled by the terrorist organisation "LPR" and for his own enrichment founded and headed the work of the firm «ROSFINGROUP» under a guise of financial services company which provided the transfers, provided the members of the terrorist organisation "LPR" with cash from their banking accounts, currency exchange, provision of activity of currency exchange points, provision of other financial and informational services withholding interest on it".

Sometimes the problems of the deficit of cash were solved without the creation of a legal entity. Thus, on 6 February 2018 Bilokurakinsky district court of Luhansk region delivered a sentence, which approved a plea agreement with the prosecutor and prescribed the punishment in the form of the fine in the amount of UAH 255 000 (15000 minimum incomes) without the forfeiture of property. The sentence contains the following.

"The accused, PERSON_1, with the aim of creating fictional financial welfare and stability on the territory temporarily controlled by the terrorist organisation :LPR", for his own enrichment, developed a criminal intent, directed at creation of the organised scheme of provision of the financial services on the temporarily occupied territory: giving cash to the members of the terrorist organisation "LPR" in Ukrainian and Russian currencies from their banking accounts opened in the banking institutions of Ukraine, currency exchange, withholding the interest for the provision of services.

For the implementation of the criminal plan PERSON_4 undertook a role of searching for the persons on the temporarily occupied territory of Luhansk region, which are unable to leave the temporarily uncontrolled by Ukrainian government territory to the territory controlled by Ukraine and withdraw the funds from their bank cards on their own. Then PERSON_4 collected cards from such clients and with the help of a resident of Bile town in Lutuhine district of Luhansk region, PERSON_5 (who was not aware of the criminal activity of PERSON_4), on his own transport, following the route between Lutuhine

town of Luhansk region and Kharkiv city, systematically carried out transportation and transfer of the specified bank cards to PERSON_1. Subsequently PERSON_1 received cash through the ATMs of the Ukrainian banks in Kharkiv city. After receiving the cash, PERSON_1 have transferred it to PERSON_5, who transported it to Lutuhine on his way back to give it to PERSON_4, providing the further illegal functioning of the financial scheme, giving cash to the clients and his personal financial enrichment.

For those services PERSON_1 in collusion with a representative of the terrorist organisation "LPR", PERSON_4, equally received from the clients 10 percent of the total amount of the money withdrawn from their banking cards. According to the information received during the pre-trial investigation, between February 2015 and September 2017 PERSON_1 withdrew from the bank accounts of the clients of the scheme in the total amount of UAH 11 597 542 (eleven million five hundred and ninety seven thousand five hundred forty two), which were withdrawn through the ATMs of Ukrainian banks in Kharkiv city. Therefore, PERSON_1, being in a criminal conspiracy with a representative of a terrorist organisation "LPR", PERSON_4, earned twelve – ten percent of the total amount of withdrawn costs, namely UAH 503 028 of which UAH 251 514 were given to PERSON_4.

Thus, since February 2015 PERSON_1, knowing that PERSON_4 is a representative of the terrorist organisation "Donetsk People's Republic", committed unlawful actions with the purpose of his financial enrichment with cash for the total amount of UAH 251 514. The pre-trial investigation body correctly qualified the actions of PERSON_1 under pt.1 of Art.258-5 of the CC of Ukraine, as financing of the terrorism, meaning the actions committed with the purpose of financial or material provision of an individual terrorist, for selfish motives".

11 sentences of the third group punish for the "financing of activity of a terrorist organisation by creating a business entity on the temporarily occupied territory and paying the so-called "taxes" unforeseen by the current legislation to the so-called "budget" of the self-proclaimed republics which are subsequently used by their representatives for reaching the criminal goals".

For example, on 5 February 2018 Bilokurakinsky District Court of Luhansk region delivered the sentence which approved the plea agreement with the prosecutor and delivered the punishment in the form of the fine in the amount of UAH 425 000 (25000 minimum incomes) without the forfeiture of the property, the accused was released from custody in the courtroom. As stated in the sentence,

"*In October 2014 (more accurate date was impossible to determine during the pre-trial investigation) a resident of Ukraine PERSON_1, INFORMATION_5… developed a criminal intent directed at financing the activity of a quasi-state formation – terrorist organisation "LPR". Providing the execution of the work plan, with the aim of profiting, on 7 October 2014 PERSON_1, was appointed by the leader of "LPR" the Acting General Director of the state enterprise «Lutuhynskiy Naukovo-Vyrobnychiy Valkovy Combinat» (Lutuhyne Research and Production Rolling Mill) (USREOU code 00187369, Luhansk region, Lutuhyne town, Zavodska st., 2), and subsequently on 26 March 2015 "the head of the Council of Ministers of LPR" appointed him the General Director of that enterprise, after which he resumed the financial and economic activities of the enterprise on the territories of Luhansk region uncontrolled by the government of Ukraine, producing the rolls, and unlawfully (without the permission of the governing body of the state enterprise – State Agency for Management of State Corporate Rights and Property of Ukraine) carried out the so-called "state registration" of SE*

"LRPRM" in the tax bodies of the so-called "LPR" under USRLE code 61201066, at the address of. Lutuhyne town, Zavodska st., 2. Furthermore, to make non-cash payments by the enterprise to "LPR State Bank" (MFI 400008, Luhansk city, T. Shevchenko st., 1) he opened the current account.

According to the tax reporting of the so-called State Committee for Taxes and Duties of the "LPR", on 01.12.2015 SE " Lutuhyne Research and Production Rolling Mill" paid "sales tax" in the amount of RUB 500000.00 (five hundred thousand) Russian rubles (according to the official hryvnia to ruble exchange rate of NBU this amounts to UAH 139337,866)".

Other actions are not incriminated to the accused.

10 sentences of the fourth group also punish for the financing of the terrorist organisations "DPR" and "LPR" through payment of the so-called "taxes" to the "budgets" of the self-proclaimed republics, but me divided them into a separate group, since those cases concern import of food, beverages and non-food products to the self-proclaimed republics (in one case – the export of the products to the controlled territory).

The application practice of Article 110-2 of the CC of Ukraine

Article 110-2 110-2 is introduced to the Criminal Code of Ukraine by the Law No. 1533-VII of 19.06.2014 and it is worded the following way:

Article 110-2. Financing of actions committed for the purpose of forcible change or overthrow of the constitutional order or seizure of state power, change of borders of the territory or state border of Ukraine

01 *Financing of actions committed to change the borders of the territory or state border of Ukraine in violation of the procedure established by the Constitution of Ukraine, - shall be punishable by imprisonment for a term of three to five years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to two years and with forfeiture of property.*

02 *Financing of the actions taken to forcibly change or overthrow the constitutional order or seize state power, - shall be punishable by imprisonment for a term of five to seven years with deprivation of the right to hold certain positions or engage in certain activities for up to two years and forfeiture of property.*

03 *The actions provided for in parts one or two of this article, committed repeatedly or for selfish motives, or by prior conspiracy by a group of persons, or on a large scale, or if they have caused significant property damage, - shall be punishable by imprisonment for a term of six to eight years with deprivation of the right to hold certain positions or engage in certain activities for up to three years and forfeiture of property.*

Article 110-2

04 *Actions provided for in parts one or two of this article, committed by an organised group or on a particularly large scale, or if they have led to other serious consequences, - shall be punishable by imprisonment for a term of eight to ten years with deprivation of the right to hold certain positions or engage in certain activities for up to three years and forfeiture of property.*

05 *A person other than the leader of an organised group shall be released from criminal liability for the actions provided for in this article., if he/she voluntarily stated what had happened before he/she was notified of suspicion, to the body whose official is entitled by law to notify of the suspicion, about relevant unlawful activity, or otherwise contributed to the cessation or prevention of a crime which he/she financed or facilitated, provided that his/her actions did not constitute another crime.*

Note

01 *The financing of actions provided for in this Article shall be actions taken for the purpose of their financial or material support.*

02 *Financing of actions committed for the purpose of forcible change or overthrow of the constitutional order or seizure of state power, change of territorial borders or state border of Ukraine, is considered committed in a large amount if the amount of financial or material provision exceeds six thousand non-taxable minimum incomes.*

03 *Financing of actions committed for the purpose of forcible change or overthrow of the constitutional order or seizure of state power, change of territorial borders or state border of Ukraine, is considered committed in a particularly large amount if the amount of financial or material provision exceeds eighteen thousand non-taxable minimum incomes.*

The summarized data on the investigation of the crimes qualified under Article 110-2 are taken from the site of the Prosecutor General's Office, and as for the court decisions under this Article – from the Unified Register of Court Decisions, and compiled in the table:

Article 110-2 of the CC of Ukraine	2014	2015	2016	2017	2018	2019	Total
Criminal proceedings registered	3	5	8	25	146	330	517
Notices of suspicion handed	–	3	5	10	70	116	204
The number of proceedings sent to court with the bill of indictment	–	1	–	6	54	60	121
The number of petitions for release from criminal liability	–	2	1	–	–	34	37
The number of closed proceedings	–	1	1	1	2	11	16
The number of proceedings concerning which the decision on termination or suspension was not taken by the end of the year	2	2	7	19	85	28	143
The number of sentences delivered by first-instance courts	–	1	–	2	5	10	18

The quick increase in the number of opened criminal proceedings in 2018-2019 draws attention. The number of handed notices of suspicion is lower, and even lower is the number of sentences approved by courts – only **14.9%** of the number of the bills of indictment sent to courts.

Only **one of 18 sentences** provides for the real imprisonment for 8 years with forfeiture of property. It was delivered in the special court proceedings in absentia for Kateryna Matyuschenko, Minister of Finance of the DPR. One sentence delivered the fine in the amount of 15000 minimal income, i. e. UAH 255 000. **16 other sentences** provide for the punishment with probation (**88.9%**). **7 sentences** were delivered in the form of imprisonment for 5 years with probationary period for 3 years (one of them provides for additional punishment – deprivation of right to hold certain positions and perform certain activities for 1 year) and **9 sentences** that provide for imprisonment for 3 years with probationary period for 1 year (5 sentences), 2 years (4 sentences, 3 of them contain additional punishment – deprivation of right to hold certain positions and perform certain activities for 1 year).

Such sentences were the results of plea agreement with the prosecutor in **12 cases (66.6%)**, in 6 of those 12 cases the court applied Article 69 of the CC of Ukraine – the application of punishment below the lowest level of the sanction.

Commentary

How correct is it to state about the entrepreneurs who do business on the uncontrolled territories of Donetsk and Luhansk regions, that the payment of taxes in the self-proclaimed republics is a constituent element of a crime under Articles 258-5 and 110-2, since it means financing the terrorism?

There is no need to explain that entrepreneurship is inextricably linked to property, meaning certain material values (machines, equipment, tools, real estate, money etc) that are used for the creation of new goods: the manufacturing of products, performing works and providing services. A person who really worked hard in that area and genuinely became the owner of the property, cannot just leave what he earned to the fate. It is appropriate here to provide the disposition used by the legislator in Art. 13 of the Constitution and Art. 319 of the Civil Code of Ukraine, borrowed from the Constitution of Germany – *"property obliges"*. It should be taken into account that entrepreneurs are legally and morally responsible for people who work at their enterprises. As is widely known, the entrepreneurship bears a significant part of social stress. The state authorities should understand that it would be a crime to turn the temporarily occupied territories into a dead zone and rejoice that Ukrainians went extinct, and everything that is called property and was created manually, or even by nature, lost its properties and qualities and cannot be restored. It is well known that people who declared the creation of the "republics" established the following on the level of their documents: if the registration is not carried out and the taxes are not paid, the residents of Ukraine will first have their business temporarily administrated, and then will forfeit it.

The need to correct the domestic criminal legislation is also evidenced by Art. 13 of UN International Convention for the Suppression of the Financing of Terrorism (adopted on 09.12.1999, ratified by Ukraine on 12 September 2002): *"None of the offences set forth in article 2 shall be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence. Accordingly, States Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence".* Thus, a person who really finances terrorism. must **on his/her own, without forcing, commit the action** in the form of collection, transfer, forwarding or otherwise sending money to the addressee for the organisation, preparation and commission of a terrorist act by an individual terrorist, terrorist group or terrorist organisation, involvement in a terrorist act, public urging to commission of a terrorist act, creation of a terrorist organisation. It should be taken into account that the word ***terrorism*** comes from Latin ***terror – "horror"***. In a wide sense the terrorism uses (or threatens to use) violence to achieve political, religious, ideological or other goals. To see what terror is, to feel it personally, it would be appropriate, as an experiment, for a person who uses the relevant norms of the criminal legislation in practice, to cross the line of contact and live for some time on the occupied territory.

It would be appropriate to mention the message left for the media by Olexandr Tymofeev who was holding the post of the Minister of Revenue and Duties in the self-proclaimed "DPR" (call sign "Tashkent", although he retired, the approach remained the same). He admitted that the gathering of taxes on the first stage was carried out with the help of armed divisions and light armoured vehicles. Tymofeev also pointed out the inevitability of tax collection and significant fines for non-payment.

Thus the enterprises whose assets are focused on the temporarily occupied territory of Donetsk and Luhansk regions found themselves in the conditions of full legal uncertainty – on one hand, the employees and property of such enterprises are in danger, illegal armed formations may at any time use violence against the employees in case of refusal to cooperate, on the other hand, the Ukrainian government does not take measures directed at clarifying the position of the state concerning the functioning of the enterprises on the uncontrolled territory. It behaves asymmetrically, and in many cases shows even more offensive and defiant attitude than the one shown on uncontrolled territory.

It seems that the law enforcement agencies of the state must take into account the above circumstances and stop the vicious practice of the groundless opening of criminal proceedings under Art. 258-5 and 110-2 of the CC of Ukraine against the innocent citizens. However, we can see, on the contrary, a significant increase in such criminal proceedings. It is apparent that the legislator should urgently radically rework that rule in such a way that the investigation would not have any temptation to abuse the rule.

It is proposed to formulate p.5 of Art. 258-5 of the CC of Ukraine in the following way: *"A person is not subject to criminal liability for the actions provided for by this Article, if the taxes or other obligatory payments and duties that are not considered a crime according to Article 13 of the International Convention for the Suppression of the Financing of Terrorism adopted by UN on 09.12.1999 were collected from it, from the organisation with which that person has labour, official, founding, other professional relations, by the administration of the territories temporarily uncontrolled by Ukrainian government. This provision does not cover the persons engaged in production, testing, sale or other kinds of distribution of weapons and ammunition".*

We would emphasize once again why the payment of taxes or other obligatory payments established by the occupying power should in no case be qualified as a crime:

01 It is not prohibited on the legislative level in Ukraine to engage in business activities in the temporarily occupied territory. Quite a number of industrial enterprises have operated and continue to operate in that part of the country – PAT "Yenakiyevsky Metalurgiyny Zavod" (Yenakiyeve Metallurgical Plant), PRAT «Makiivkoks», PRAT «Yenakiyevsky KHZ», PRAT "Alchevsky Metalurgiyny Zavod" (Alshcvsk Metallurgical Plant), Ukrzaliznytsia units etc.

02 Ukrainian regulations provide for the possibility to transfer the goods through the line of contact both from the territory controlled by Ukrainian government, and from the temporarily occupied territories. The movement of vehicles and cargo is carried out according to the Interim Procedure of control over the movement of persons, vehicles and cargo along the line of contact in Donetsk and Luhansk regions.

03 According to the second paragraph of Article 64 of Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12.08.1949 the occupying power *"may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them".*

04 In particular, on the temporarily occupied territory of the self-proclaimed "DPR", the illegal armed structures adopted (in the original language) «Vremennoye Polozheniye o Nalogovoy Sisteme DNR» (Interim provision on the tax system of DPR), which provides for the obligatory payment of taxes on that territory, as well as «Ugolovniy Kodex DNR» (Criminal Code of DPR) that establishes the criminal responsibility for non-payment of taxes.

05 Self-proclaimed "DPR/LPR" have military formations, illegal law-enforcement bodies, unlawful judiciary and the places of detention, which evidences the presence of sufficient measures to enforce the demands of illegal authorities.

But why are the criminal proceedings opened under Articles 258-5 and 110-2? We often heard the following explanation.

Usually the criminal proceedings are not opened against some of the accused, but only according to the fact of the alleged crime. Such proceedings are a sort of fishing net. This net is thrown in a place where with luck it is possible to find something valuable. Sooner or later a naïve and inexperienced middle-class businessman would appear on the contact line (the operatives have made their preliminary conclusion – such businessman must have money). Even better, when some of the houses, buildings, land plots of such businesspersons are on the territory of Ukraine controlled by the government and not on the occupied territory. In such cases it is much easier to seize the property. As soon as the officers of SSU deliver the resolution on the declaration of suspicion, the suspect is detained at once.

Later, in two or three days a court sanctions his detention in SIZO before the end of the investigation. And there is no need to explain what happens with a person when he or she is alone in the cell with the investigator and his assistants who exist within SIZO in sufficient numbers. The inventions that help the investigations, created by Ivan the Terrible, were later developed and modified in 1937, nobody has forgotten them and they are passed down from generation to generation. Therefore, after all the trials that await the suspects in SIZO, a plea agreement with the prosecutor is concluded as on the prosecutor's terms to stop the physical and mental ill-treatment as soon as possible. The document is followed by a significant sum of ransom money which is a secret addition to the agreement. In Ukraine the tax for the release from torture for a businessman varies between USD 150 000 and 250 000. In such simple manner individual SSU employees commit robberies and outright banditry in the workplace.

We could provide many particular examples. Let us examine only one of them.

Investigative Department of the Main Directorate of the Security Service of Ukraine in Kyiv city and Kyiv region opened criminal proceedings in the middle of August 2017 on the grounds of the criminal offence under pt. 3 of Art. 258-5 of the CC of Ukraine. The investigation was entrusted to investigator B.

So what was clarified? It turned out that enterprise Kh. whose management lives on the occupied territory and whose main production is also located there, continues its financial and economic activity, selling the results of its work among the local population and paying what the quasi-authorities beyond the line of contact call "taxes". If so, the investigator believes, there is financing of the terrorism, and as a result, the criminals should be sentenced under Article 258-5 of the CC of Ukraine. Some other SSU officials qualify the similar actions under Art. 110-2 of the CC of Ukraine.

B. knew what he had to do: he began waiting for the prey. The founders and management of enterprise Kh. did not expect such cunning: they were evacuating their business from the occupied territory of Ukraine (of course, the state was not helping, and stood aside). In difficult conditions the administration was bringing assets from the occupied territory and investing the money in fixed assets, other goods and material values, like responsible thrifty entrepreneurs. For their work they built a polyclinic in Bila Tserkva and the infrastructure objects necessary for work. When possible, they even bought living premises for the employees, so that almost the entire staff could relocate to the new place, feel more or less comfortable and engage in management that benefits everyone, and the state not least.

At last the time of attack was chosen. On 28 September 2017 B., heading the group of operatives (around fifteen persons) launched a management-approved operation. As usual, they were followed by the witnesses that agree to anything. There were relatives of the entrepreneur in the household, which found temporary shelter from the explosions in Kalynivka. On the night of the tragedy they left Kalynivka with little children. There was an ill old woman in the summer kitchen. But the robbers from the SSU did not care for the fire survivors, ill people, children and old people. They provided the confused citizens with the search warrant and spread themselves in all rooms. Each of them shamelessly took what he wanted, feeling like a fish in the water. They did not forget to take vodka from the garage. They took a tablet from the dining room. It was bought for the entrepreneur's son who died tragically in Khartsyzsk. There was a photo of the child in the tablet, another piece of valuable private information that only concerns the family, the memory of the deceased child.

SSU's hunt did not end at that. On the same day they went to the entrepreneur's office in Bila Tserkva. Before the start of the search as planned they broke the electronic surveillance system, so that nobody would see what items disappeared, and where. They seized all electronic devices, took the medicines. They stole the medicines and other material values in the total amount of UAH 90 000.

During the questioning the witnesses, as usual, were beaten, intimidated,: the whole powerful arsenal of the means of crime detection was used. The people were threatened that if they talk too much a grenade may accidentally fall in their yard, an accidental lucky shot may happen, or another way of punishment may be found. One of the witnesses, T., the commercial director of a Khartsyzsk enterprise, who was bringing the enterprise's property to Ukraine, was forced to visit Bezler's torture chambers in the occupied territory. When he compared the torture he was subjected to in terrorist-occupied Horlivka and in Kyiv, in ITT of the SSU, in Askoldovy lane, his conclusion was unequivocal: it was easier in Horlivka, he was heavily beaten, but the torturers in Kyiv are much more brutal. When the witnesses were released from SIZO, suggestions came from all sorts of intermediaries on how to settle the matter.

The case was settled and those who already relocated had to relocate back to Khartsyzsk.

04 SSU ACTIVITY IN THE FIELD OF COUNTERACTING THE ILLEGAL MIGRATION

In the conditions of the armed aggression of the Russian Federation against Ukraine, the occupation of AR Crimea and the city of Sevastopol, the war in the east of Ukraine and the creation of the quasi-state formations of the so-called "LPR" and "DPR" under the actual control of RF, the issue of security of Ukrainian and foreign citizens who became the victims of persecution by the Russian Federation and its satellites has become extremely acute.

Many of Russians, the victims of persecution by the Russian authorities, try to find asylum in Ukraine, and the Ukrainians persecuted by RF, hope for the protection of Ukrainian state. But is Ukraine a safe country?

Under paragraph 52 of the Report of UNHCR "Discussing the issues of international protection related to the development of the situation in Ukraine – update III" of 24 September 2015, Ukraine should not be seen as a "safe country of origin". UNHCR explains: *"In the current circumstances UNHCR does not consider it appropriate to find Ukraine to be a "safe country of origin". The states must remove Ukraine from the lists of the "safe countries of origin". Accordingly, UNHCR calls on governments not to apply accelerated procedures with the reduced procedural guarantees (including without termination of execution) to applications for international protection by the citizens of Ukraine or ordinary residents of Ukraine; and not to subject these persons to different reception conditions than other applicants for international protection"*[70].

Similarly, Ukraine is not considered a "safe third country". UNHCR in para 54 of that document states: *"UNHCR does not consider it appropriate for the states to appoint or support the appointment of Ukraine as a so-called "safe third country". The appointment of a country as a "safe third country" may result in the application for international protection not being considered on the merits, but declared unacceptable, or processed in an accelerated procedure with limited procedural guarantees... UNHCR asks the countries to consider the asylum applications from the residents of the third countries who used to live in Ukraine or were in transit through Ukraine, with the use of fair and efficient procedures with full set of procedural guarantees"* [71].

Annex 1 to the Directive 2013/32 / EU of the European Parliament and the Council of the European Union on 26 June 2013 on general procedures for granting and revoking international protection (new edition) provides the definition of the safe country of origin: "A country in which, based on the legal situation, the use of law within a democratic system and the general political circumstances, it can be demonstrated that there are no persecutions, as defined in Article 9 of the Directive 2011/95/ ЄС, there are no tortures or inhuman or degrading treatment or punishment and there is no threat of indiscriminate violence in the context of international or internal armed conflict, is considered a safe country of origin. This assessment shall take into account, in particular, the degree of protection against persecution or ill-treatment:

- *relevant laws and provisions of the country and the way of their implementation;*
- *observance of the rights and freedoms enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms and / or the International Covenant on Civil and Political Rights and/or United Nations Convention against Torture, in particular, rights which may not be derogated from under Article 15, paragraph 2, of the said European Convention;*
- *respect for the principle of non-return under Geneva Convention;*
- *provision of system of efficient means of protection against the violations of those rights and freedoms"* [72].

Unfortunately, in our opinion, Ukraine does not meet the criteria of EU, as a safe country of origin. Although the Ukrainian legislation in general corresponds to the international standards in this field, the practice of application of law remains far from such standards. The annual analytical report of the human rights organisations "Human rights in Ukraine – 2017" contains the data about the murders, forced disappearances, indiscriminate violence during the conflict with Russia, the use of tortures or ill-treatment etc [73].

Art. 3 of the Constitution of Ukraine considers the life and health, dignity and honor, inviolability and safety of a person the highest social values, and under Art. 25 of the Constitution *"A citizen of Ukraine shall not be deprived of citizenship and of the right to change citizenship. A citizen of Ukraine shall not be expelled from Ukraine or surrendered to another state. Ukraine guarantees care and protection to its citizens who are beyond its borders"*[74]. Despite those constitutional guarantees, Ukraine is not able to effectively protect its citizens from persecution by the Russian authorities. This also concerns the Russian asylum seekers, persecuted by RF.

The asylum system in Ukraine demonstrates the entire complex of systematic violations of human rights:

01 Abduction and illegal extradition to the country of origin;

02 Denial of the opportunity to apply for asylum in Ukraine and abuse of the application procedure;

03 Transfer of the confidential information to the state authorities of the country of origin;

04 Groundless denial of asylum;

05 Violations of appeal procedure;

06 Non-execution of court decisions and repeated appeals of court decisions by the SMSU;

07 Violations of the right to freedom and personal inviolability in the cases concerning the extradition because of lack of alternative to the temporary arrest, the use of practice of repeated arrests, illegal increase of term of extradition arrest;

08 Discrimination against the foreign participants of ATO and JFO related to the lack of their defined status.

Most of the systematic violations listed above are either related to unlawful activity of SSU officers, or the forming of inhuman state policy in the field of provision of asylum, which is de facto formed by SSU.

In June 2015 Ukraine joined the International Convention for the Protection of All Persons from Enforced Disappearance and is obliged to adhere to all its norms. Under Art. 2 of that Convention *"enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law"*[75]. Under the international law, the enforced disappearance is a crime, and in certain circumstances – even a crime against humanity. Pt. 2 of Article 1 of the Convention states: *"No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance"*[76]. In Ukrainian legislation an unlawful deprivation of liberty or abduction of a person is a serious criminal offense (Art. 146 of the CC)[77]. Instead we have to state that SSU have been conducting enforced disappearances for a long time already[78]. In particular, we know of three cases of abduction and unlawful extradition to RF of persons who wanted to return or applied for the refugee status in Ukraine, by the employees of SSU.

Kidnappings of oppositionists by special services of the Russian Federation from the territory of Ukraine were practiced even before the Euromaidan. Thus, on 20 October 2012 Leonid Razvozzhayev was kidnapped near the office of UNHCR. The MD of MIA of Ukraine in Kyiv stated that no applications concerning the disappearance of that person were received.

The SPSU denied its involvement in Razvozzhayev's transportation to Russia. However, there are reasonable grounds to believe that the Ukrainian special services contributed to the kidnapping [79].

Olexandr Shumkov, a member of Euromaidan, a serviceman who cooperated with the Military Prosecutor's Office in the issues of search for deserters, was detained by the representatives of FSS on 6 September 2017 on the territory of RF on the suspicion of "committing a crime" under pt.2 of Art. 282.2 of the CC of RF – participation in extremist organisation, he is detained in Bryansk SIZO. Olexandr told his lawyer that he arrived to Russia because of provocation. According to Shumkov's family, Olexandr was immobilized by an unknown substance in the Sumy region of Ukraine and secretly transported to RF by the representatives of Russian special services. The State Border Service insists that Olexandr Shumkov crossed the border on his own free will. It is most likely that the Russian special services lured Shumkov to the territory of the Russian Federation for further pursuit [80]. In the opinion of Shumkov's relatives, the kidnapping was carried out with the participation of Ukrainian special services [81]. This explains the fact that Shumkov was not exchanged with other Ukrainian prisoners of the Kremlin.

Aminat Babayeva was detained on 9 September 2016 by the border guards at the border crossing port in Kharkiv Airport, although there were no legal grounds for her detention. She was deported from Turkey because her former husband was suspected of participation in hostilities in Syria as a member of ISIS. Babayeva stated that she has not seen her former husband for two years. She taught Arabic and Quran to children in Istanbul. Her friends turned to Kharkiv Human Rights Protection Group (KHPG) asking for legal assistance, but the lawyer of KHPG was not admitted to Babayeva, in violation of the law. The employees of SSU who arrived to the airport persuaded Babayeva to agree to return to Russia, then to Belarus. After the interference of the administration of MIA Babayeva was admitted to the country. She stayed at a hotel, and on Monday 12 September she applied to Kharkiv regional branch of the migration service to apply for asylum, but unidentified persons kidnapped her from there, forcibly placed her in a car and took her away. Aminat recognized one of her kidnappers as an employee of SSU named Artur, who spoke to her at the airport. Artur took her tablet and did not return it. Babayeva was brought to the border crossing with Russia "Hoptivka" and given to Russian border guards. Her belongings remained in the hotel. A report was published on the SSU website that Babayeva had been forcibly returned on suspicion of terrorism and she crossed the border between Ukraine and RF on her own free will [82].

Some time later Aminat Babayeva arrived to Ukraine again. In August 2020 the officers of SSU detained her and her three-year-old child in Kyiv suburbs. This was reported to human rights activists by A. Babayeva's husband, the father of her child, a citizen of the Russian Federation Ali Aliyev. A.Aliyev and A.Babayeva are in a religious marriage. Their child is a citizen of Ukraine. According to A. Aliyev, his wife was kidnapped by SSU officers who did not introduce themselves, from the premises where they lived. A. Babayeva was on the territory of Ukraine illegally then, their daughter was born in Ukraine and has a Ukrainian citizenship. A. Babayeva and her child were brought by SSU officers to the Ukrainian-Belarusian border and expelled from Ukraine without the opportunity to consult a lawyer and challenge the decision to expel her in court. Through the mental pressure the SSU officers obtained her written consent for voluntary departure from Ukraine [83].

In April 2017 the representatives of competent Ukrainian bodies, likely, SPSU or SSU, illegally transferred to RF a native of the Dagestan city of Buynaksk, Ahmed Isakov. He was deported to Kharkiv from Turkey. After Isakov left Russia he lived in Ukraine for some time.

Later he left to Turkey, where, according to unconfirmed information, he lived with a fake passport of a citizen of Ukraine. At once after his arrival to Kharkiv airport a fake Ukrainian passport was found on him, Isakov was detained. His request to apply for asylum was denied and without proper procedures he was forcibly sent to Russia without the opportunity to challenge this decision in court. In Russia he was taken in custody, a case for illegal possession of weapons was initiated against him[84].

A criminal case was initiated against **Volodymyr Yegorov**, a member of "Yabluko" party, in 2016, for incitement to extremist activity, for the post in "Vkontakte" social network (pt. 2 of Art. 280 КК РФ), in which he spoke sharply about Russian President Vladimir Putin. On 13 June 2017 Yegorov crossed the border with Ukraine with the internal passport of RF and wrote an asylum application on Senkivka checkpoint. The SMS in Chernihiv issued the documents and a certificate of an asylum seeker in Ukraine. On 5 July 2017 SSU officers kidnapped him from the place of his temporary employment, brought him home to get his belongings and took him to the neutral strip near Senkivka checkpoint. Yegorov was prohibited to enter Ukraine for three years. After that, the SSU officially responded to the request of the Public Television that it did not decide on forced return or forced expulsion and entry ban[85]. Yegorov entered Belarus where he disappeared on 27 July, and was later found in a temporary detention centre of his native city of Toropets of Tver region of RF. As it turned out, he was detained by Belarussian KGB, he was charged with "minor hooliganism" and three days later he was taken to RF[86]. The "Memorial" human rights centre recognized Yegorov as a political prisoner . After the end of the pre-trial investigation and transfer of the materials to the court, Yegorov was released from custody on 16 November 2017[87].

In Russia, citizens who profess the Salafi version of Islam are constantly subjected to persecution by the Russian special services. Their mosques are closed, their imams and believers are detained and arrested on accusations of extremism and terrorism, many believers were kidnapped, tortured, executed without trial, and their bodies are said to be the bodies of militants allegedly killed in clashes with Russian security forces. Thus, for example, a report of international "Memorial" community mentions a case in Dagestan concerning Hasanhusaynov brothers who were shot by the security forces and whom the security forces tried to present as militants. The report also contains many other pieces of information on the murders, forced disappearances and tortures of prisoners in Northern Caucasus[88].

The report of the US State Department for 2016 states about **480 cases of enforced disappearances** in Northern Caucasus[89]. Numerous cases of tortures and murders of Salafist Muslims in Russia are documented by Russian media, as well as human rights organisations – both Russian and international ones. In particular, the independent Russian edition "Kavkazsky Uzel" chronicles the terror in Dagestan[90].

The Ukrainian human rights organisations filmed and published in the media the interview with Muhammed (his surname is not published for security reasons), who back in 2010 was kidnapped and tortured by FSS and local Ingush police. According to Muhammed, who received asylum in Finland, only from his village in 10 years the so-called "death squads" kidnapped 100 people: They were mostly killed or are considered missing. **Only 5 out of those 100 people returned alive[91].**

The systematic and mass violation of fundamental human rights concerning the persons belonging to this category was also recognized in the reports of the international human rights organisations – Amnesty International, Human Rights

Watch, as well as in decisions of European Court of Human Rights against Russia (the cases *Gaysanova, Dalakov, Abakarova, Kagirov*[92] and many others).

In 2014-2015 the armed opposition to Putin's regime in the autonomies of the Northern Caucasus began to subside due to the outflow of active opposition to Iraq and Syria. Some guerrillas from Caucasus moved to the so-called Islamic State of Iraq and the Levant (ISIL), some joined the Free Army of Syria. Since then, according to our observations, FSS of the Russian Federation launched a new technology of persecution of Salafist Muslims disloyal to Putin's regime. Those who leave the borders of Russia to avoid the persecution, are now wanted internationally by Interpol on standard charges under Art. 208 of the CC of RF "Organisation or participation in illegal armed formation". It concerns the participation in the armed formations on the territory of Russia, as well as abroad. A Russian journalist, **Orkhan Jemal**, who specialized on covering the situation of Russian Muslims, found near 30 residents of Himry village (Autonomous Republic of Dagestan) in Turkey, who were accused by the FSB in absentia of terrorism and involvement in ISIS[93]. The legislation of RF provides criminal responsibility for the participation in illegal armed formations beyond the borders of Russia only in case when such formations act against the interests of Russia. This amendment was introduced to the CC of Russia on 2 November 2013 by the Federal Law No. 302-ФЗ "On amending the individual laws of the Russian Federation"[94], which confirms, in particular, the thesis of long-term preparation for a hybrid war against Ukraine.

RF also persecutes the Muslims of "unorthodox branches" for other "anti-terrorist" articles: 205.1 of the CC of RF "Contribution to the terrorist activity", 205.3. "training with the aim of the terrorist activity", 205.5 of the CC of RF "Organisation of activity of a terrorist organisation and participation in activity of such organisation".

We know of 10 such cases (Timur Tumgoyev, Ruslan Akiyev, Magomed Iliyev, Sharapudin Sharapudinov, Shahban Isakov, Ruslan Meyriyev, Albert Bogatyryov, Arif Jabarov, Islam Beltoyev, Ali Bakayev). All of them are Muslims, wanted by the National Central Bureau of Interpol of the Ministry of Internal Affairs of the Russian Federation at the request of the FSS. Some of those persons are in SIZO in various cities of Ukraine in interim or extradition arrest, other preventive measures are applied to others. Also, it should be noted that according to the official reply of PGO, 36 people were extradited to Russia in the period between 2014 and 2017[95].

According to the data of the Media Initiative of Human Rights, in 2014-2016 Ukraine continued to give the residents of Russia to RF not only for the general criminal articles (murders, illegal drug trafficking, fraud, thefts). Two persons were extradited for the above-mentioned "anti-terrorist" articles, which turned in Russia into an instrument of political persecution, including persecution of the residents of Ukraine. It is unknown who are those two[96].

Meanwhile, all of the above-mentioned Russian nationals whom Ukraine was going to give to RF are charged with the articles, of which Ukrainians are accused in the temporarily occupied Crimea, and whom Ukraine recognizes as political prisoners[97].

In particular, the above-mentioned Article 205.5 of the CC of RF is an article of accusation against 25 Crimean Muslims detained in Crimea and Russia. **Ruslan Zeytulayev** was already convicted under this article to 12 years of imprisonment in a maximum security level colony, and three more Crimean Muslims – to 5 years of imprisonment. This article was introduced in the Russian legislation by the infamous

Federal Law of 02.11.2013 No. 302-Ф3 and is a very manipulative one. The experience of the cases of Crimean Muslims indicates that it is not necessary to commit or plan the violent actions for a Russian court to find a person guilty of terrorist activity[98]. In general, most of the persons believed by Ukraine to be the prisoners of Kremlin, are accused of terrorism, extremism or participation in illegal armed formations in RF.

Thus, Ukrainian state admits that Ukrainian citizens are illegally persecuted for political reasons under these articles, however, it is ready to extradite the persons who are persecuted in Russia under the same articles. This indicates the double standards of Ukrainian policy. Moreover, analysing the turnover of the extremist cases, it is possible to reach the conclusion that Ukrainian competent bodies are interested in their extradition. During the protection of those persons as well as the advocacy in this field, the employees of Kharkiv Human Rights Protection Group found several systematic violations of human rights and, trying to understand the sources of the problems, raised that issue on the level of Committee of Human Rights of National Minorities and International Relations[99]. During the meeting of the Committee, further meetings of the established working group, as well as meetings with representatives of various competent authorities, the employees of human rights organisations and people's deputies, the members of the Committee got a clear impression concerning the position of various members of this process. In our opinion, such position of the state in this field is formed by the Security Service of Ukraine. If other competent state authorities are sometimes ready for a compromise, SSU does not allow them to do it inasmuch as it can[100].

All citizens detained in Ukraine on extradition requests from Russia are accused of participating in illegal armed groups or terrorist activity on the territory of Russia or abroad. It is significant that cases against all these Russian citizens were initiated after they left Russia. The analysis of the materials of the cases initiated against those persons indicates that the actions incriminated to them were seemingly committed after they were gone from the territory of Russia. For example, **Ruslan Meyriyev** lived on the territory of Autonomous Republic of Crimea since 2013, and he is accused of actions in Russia, which he allegedly committed while living in Ukraine. The above-mentioned refugee in Finland, Muhammad, stated that evidence was extracted from him, including the evidence regarding the alleged "terrorist activities" of Ruslan Meyriev. Meyriyev was able to timely leave Caucasus, and later – the RF. According to the local residents, tortures constitute an everyday practice[101].

Magomed Iliyev, Tymur Tumgoyev and **Zelimhan Belharoyev** were accused in their homeland of participation in illegal armed formations of ISIL on Syrian territory. The Russian authorities did not provide the Ukrainian party with the documents that would confirm those statements. The foreign passports of those citizens of RF indicate that they were legally in Turkey and Egypt when they allegedly committed the actions incriminated to them. Furthermore, the lawyer of Tymur Tumgoyev provided the appellate court in Kharkiv with the testimonies of his client's sisters, who are still living in the Russian autonomy of Northern Osetia – Alania, about groundless persecution of Tumgoyev on the basis of religion for belonging to the branch of Islam that is considered hostile by te Russian authorities.

Several more Russian refugees from the Caucasus are accused by FSS of their involvement in the armed opposition to the Russian authorities in that region, namely, of involvement in the organisation "Imarat Kavkaz", which is considered a terrorist one[102]. However, Russian authorities have not provided any evidence of those citizens being involved with the "Imarat Kavkaz", the Russian investigators state that a Muslims from the Caucasus waged war simultaneously in the interests of "ISIL" and

other organisations, hostile to the "Islamic State", in particular, such accusation was raised against Belharoyev. It is known that "Imarat Kavkaz" is in the state of war with ISIL and supports the free army of Syria [103].

Most of the Russian Muslims that were under extradition enquiry in 2015-2016 were tied by the SSU to the common terrorist group. Regardless of the fact that according to the accusations raised in Russia, they belonged to the conflicting terrorist organisations on the territory of Syria: some are accused of participation in ISIS, while others of participation in "Imarat Kavkaz" [104].

On 12 September 2018 in an unknown place on Ukrainian-Russian border the representatives of SSU handed over to employees of FSB of the Russian Federation a citizen of this country Timur Tumgoev. He was detained on the previous day by the national police for the violation of rules of being on the territory of the country, and handed over to the officers of SSU. Tumgoyev applied to State Migration Service asking for asylum as a person persecuted in his country of origin for religious beliefs. His application was rejected and he challenged this decision in a Ukrainian court. He was refused in the trial court and the appellate court. However, the actions of the National Police and the SSU, namely the failure to notify his lawyer about the extradition, deprived Tumgoyev of the possibility provided by the Ukrainian legislation to have his cassation appeal reviewed, although the proceedings in cassation were already opened and the composition of the court was determined. Thus, Tumgoyev was extradited to Russia with violation of his rights – to the country where his life is in danger. The extradition of Tymur Tumgoyev to RF took place despite the fact that after the release from the extradition arrest he joined the ranks of the voluntary association of immigrants from the republics of the North Caucasus. His participation in the battalion of Sheykh Mansur was confirmed in the Prosecutor General's Office of Ukraine by the commander of that unit, Muslim Cheberloyevsky, as well as other fighters and officers of the Voluntary Army of Ukraine, which includes that battalion. The participation of Tumgoyev in hostilities against pro-Russian separatists of Donbas significantly worsened his situation in RF – the fabricated case concerning his participation in illegal armed formations on the territory of Syria was supplemented by the real facts of participation in Sheykh Mansour's battalion, which is considered an "illegal armed formation" by the Russian special services. The Prosecutor General's Office of RF replied to the request of the Prosecutor General's Office of Ukraine about the place of detention of Tumgoyev, that as of 17 September he was in custody in SIZO of Belgorod city not far from Ukrainian-Russian border. It became known from Tumgoyev's relatives that during the staging of Tumgoyev from Belgorod to the SIZO of Pyatigorsk city on the Northern Caucasus in Russia he was brutally beaten. On the moment of the preparation of the report it is known from the lawyer, Andriy Sabinin, that Tumgoyev is detained in SIZO of Vladikavkaz city (the capital of the Russian autonomy Northern Osetia-Alania). The FSS unit in that autonomy initiated the case against Tumgoyev for the accusation of participation in illegal armed formation on the territory of Syria. The Prosecutor General's Office of Ukraine stated that it will conduct the enquiry into the lawfulness of the extradition of Tumgoyev. Its results are currently unknown. In Russia Tumgoyev was convicted for 18 years of imprisonment in maximum security colony. During the investigation and trial he was numerously beaten and tortured, and it was told to the human rights activists by his relatives. He complained to ECtHR about the ill-treatment and the violations of right to fair trial. After the Supreme Court of Russia upheld the sentence of the trial court, Tumgoyev was staged to the colony in Saratov. As evidenced by his relatives, for the entire time since his admission to the colony Tymur Tumgoyev was held in solitary confinement and cell-type premises for fictitious, often fabricated reasons.

In November 2020 he was sent to an unknown (at the moment of writing the report) colony for the subsequent 1 year-long placement to an internal prison. Tumgoyev's family notified the human rights activists about that.

Soon after Tumgoyev's extradition Verkhovna Rada of Ukraine adopted the law on amending several laws of Ukraine (on the legal status of foreigners and stateless persons who participated in the protection of territorial integrity and inviolability of Ukraine)[105]. Its aim is to streamline the stay in Ukraine of participants of ATO/JFO who are not the residents of Ukraine and simplify their acquisition of official status in Ukraine.

However, the adoption of such law does not prevent SSU officers from committing illegal actions. On 2 December 2020 SSU officers detained at his place of residence in Kyiv suburbs a resident of RF, Ruslan Akiyev, a fighter from Sheykh Mansour's voluntary battalion, who fought in the area of Anti-Terrorist Operation/Joint Forces Operation in Donbas. SSU officers did not allow Akiyev's lawyer to see him, deprived him of the possibility to challenge the decision of the Prosecutor General's Office about the extradition in the court, and later brought him in secret to the border with Moldova and handed him over to the special forces of that country[106].

According to our observations, SSU exerts pressure on other competent state authorities in the issues of provision of asylum to those persons, concerning the selection of a preventive measure, extradition inquiry etc. In the apartment in Vinnytsya, rented by Iliyev and Meyriyev, the investigators of SSU seemingly found a pistol, they used that fact in the opinion of SSU about the impossibility of provision of asylum in Ukraine to Meyriyev and Iliyev. However, there was no accusation of either the creation of a terrorist group, or illegal possession of arms. From the words of Meyriyev and Iliyev it is known that during their stay in SIZO they were questioned by SSU and there were attempts to persuade them to admit illegal possession of arms, then they will be convicted in Ukraine and avoid extradition to Russia. Meyriyev and Iliyev refused such offer, they do not consider themselves guilty of possession of weapons. In their opinion, the pistol was planted during the search conducted by SSU in their absence.

One of the typical abuses and kinds of pressure on Muslim refugees by the SSU is the attempt to influence the SMSU during the examination of an application for the refugee status. There is a widespread practice of letters from the SSU to the SMSU marked "for official use". They are regularly referenced by the lawyers of SMSU in the court hearings during the examination of complaints of asylum seekers about the decisions to refuse to provide the status. This practice is the most wide-spread concerning the members of "Hisb ut-Tahrir" party. Human rights activist Ilmir Imayev sent requests to SSU asking to justify in open court proceedings or in writing the request to not provide the refugee status to the escapees. However, the reply stated that such information is a secret and is not to be discussed. Such practice also covers other Muslim refugees. It is known that SSU applied with a similar letter to SMSU in the case of a resident of RF, an Ingush Ruslan Meyriyev. As he noted to the human rights activists, first the SSU in their letters to SMSU stated that he was allegedly a suspect in the criminal proceedings, then – that Meyriyev is a witness in such case. SMSU refused to provide him a refugee status for the third time, referring to SSU's letter[108].

SSU's interest in extradition of Muslims to RF can be explained by three reasons.

01 Islamophobia

Undoubtedly, one of the important factors complicating the asylum of Muslims in Ukraine is Islamophobia of Ukrainian government officials, especially SSU. There are numerous indirect evidences of that. The most indicative are the following. The representatives of SMSU refer to the SSU's opinion during the court hearings in the cases of appeals against the refusals to provide the asylum to the foreigners who are persecuted on the suspicion of membership in the party "Hisb ut-Tahrir" (HT). According to SMSU, it states that that party is an "extremist" one, and its members pose danger for the Ukrainian state. Such position of SSU has its history. The members of "Hisb ut-Tahrir" from among the ethnic Crimean Tatars who after the annexation of Crimea left to the mainland of Ukraine, state that the employees of Crimean Main Committee o SSU obstructed the legal activity of the members of that party before March 2014. In particular, they were obstructed in holding the mass events, and those events that took place, were filmed by SSU officers. Some employees allowed themselves to make abusive remarks and even use force against the Muslim members of HT. The most well-known among such employees of SSU (and after March 2014 – the FSS of Russia) is **Artur Shambazov**[108]. He is involved in the case of torture of a Ukrainian abducted by Russian special services, Olexandr Kostenko. According to various assessments, between **95%** and **98%** of the employees of the Crimean Department of SSU betrayed the oath and switched to serve Russian FSS after the annexation of the peninsula[109]. An indirect evidence of the bias of SSU officers towards Muslims are, according to the members of HT, the arrests of exactly those members of their party in Crimea whose participation was documented by SSU before March 2014 during the mass events. The SSU employees invited to the meetings of Verkhovna Rada of Ukraine on human rights, national minorities and international relations began all replies on the causes of violation of the rights of the migrants with lengthy statements about the threat of Islamic extremism, trying to form in the audience the image of the Islamic threat that justifies any violations concerning Muslim asylum seekers. On one of such meetings in 2016 a representative of SSU resorted to outright misinformation, by telling about the organised criminal group of natives of Caucasus autonomies of Russia. It was allegedly discovered by the employees of this Ukrainian special service. Under the pressure of the facts that SSU officer had to admit that the entire group consisted of one person, and the cases of all members of the group were closed, except one – an Ingush, **Ruslan Akiyev**. The accusations against him were refuted in the court. In autumn the Dnipro district court of Kyiv did not find Akiyev guilty of creation or participation in a criminal group, and sentenced him to a small term for illegal possession of firearms. Thus, there are numerous facts of a negative, biased attitude of SSU to Muslim asylum seekers[110].

02 Informal cooperation of the special services

Among the older generation of the SSU officers most of the generals graduated from KGB High School of Dzerzhinsky. After the collapse of the Soviet Union, the secret services of the former Soviet Union maintained strong ties, both on the professional and personal levels. We have numerous indirect evidences of informal cooperation of the special services of the former USSR[111].

03 Corruption factors

There is no evidence that SSU officers receive bribes for the extradition of persons suspected of terrorism or participation of illegal armed formations. However, among the Muslims persecuted by RF for those Articles, as well as among the Russian lawyers defending them, there is a popular opinion that FSS provides a significant reward for each "head". Since the activity of the special services is closed, and the interest is proven, it is impossible to exclude the corrupt element in the extradition cases[112]. In addition, cases of bribery in the SSU in a directly related area are already being investigated – concerning the asylum in Ukraine[113].

The Prosecutor General's Office of Ukraine justifies its decision about the extradition of the Russian Muslims by the fact that according to the current legislation it is not obliged to verify the circumstances of the accusations against people who are wanted by "Interpol". However, according to pt.2 of Art. 589 of the CCP "*the offence for which extradition is requested is not punishable by deprivation of liberty by the Ukrainian law; the competent authority of the foreign state has failed to provide, upon request of the central authority of Ukraine, the additional materials or information without which a decision on a request for extradition may not be made (pt. 4); the person's extradition contradicts Ukraine's obligations under international treaties of Ukraine (pt.5); there are other grounds provided for by an international treaty of Ukraine (pt 6).*" Those provisions of the CCP provide the examination of the contents of accusations and requesting additional materials from the authorities of a foreign state, because the things that are constituent elements of a crime in foreign countries are not always the same in Ukraine. Thus, the prosecutor's office of Ukraine ignores the international obligations of Ukraine to not extradite the wanted persons if there is a threat to their life and health, if they are persecuted for political, religious, ethnic motives etc . Extradition inquiries must include the analysis of such grounds for refusal of extradition, as well as the procedure for providing the status of a refugee or a person in need of additional protection.

The similar situation has developed in the work of SBSU and SMSU. Under the legislation of Ukraine the activity of those bodies is directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Interior, however, based on the experience of our work on the protection of rights of the refugees, we have to note that in particular cases in the area of provision of asylum the activity of those bodies is informally coordinated by SSU. The employees of SBSU, contrary to the international obligations of Ukraine, in most cases refuse to accept the applications of asylum seekers for provision of the status of a refugee or a person in need of additional protection, on the border, and refuse to allow them to enter the territory of Ukraine, and SMSU often refuses in accepting documents or unreasonably refuses to give them the status of a refugee or a person in need of additional protection, based on low-quality check. Such situation concerns not only the Russian Muslims persecuted by Putin's regime, but also other categories of asylum seekers.

The asylum system in Ukraine shows the entire complex of systemic violations of human rights.

The first of them are unlawful refusals of access of asylum seeker to the procedures of being recognized a refugee or a person in need of additional protection. Most of them occur at checkpoints across the state border and are related to the general refusal to let the person enter the territory of Ukraine.

This especially concerns the citizens of Syria, Somalia, Afghanistan and Iraq, whom the border guards do not allow to enter the territory of Ukraine, accordingly, depriving them of the possibility to apply for the protection, while there are armed conflicts in those countries, which gives reasons to at least recognize them as persons in need of special protection. But such a fate often befalls Muslim refugees from Russia. Refusal to let the asylum seekers enter the territory of the country is one of the manifestations of Islamophobia. The decisions to deny the access are taken by the SSU, and implemented by the State Border Service of Ukraine. An example of such discriminatory policy is the above-mentioned case of **Aminat Babayeva**. Another example of such practice is the case of a Russian national from Dagestan, **Asiyat Abdulkarimova**.

In August 2017 Abdulkarimova with her seven minor children arrived at Boryspil airport on a flight from the Arab Republic of Egypt via Turkey, in order to meet her husband, who was in the procedure of reception of the refugee status. The officials of the border service refused to allow her to enter Ukraine, referring to the decision of an authorized body on the ban on entering Ukraine. Abdulkarimova filed the application for the protection, but the SbS of Ukraine refused to examine the application. On 16 August Abdulkarimova was sent to Cairo from Boryspil airport, where she was first detained for several days, and then forcibly sent to Moscow[114].

The lawyer sent the requests to SSU and Migration Service asking about the grounds for the ban on entering Ukraine and refusal to examine the application for the refugee status. In October of the same year SSU provided a copy of the ruling of 29 March 2017 on Abdulkarimova's ban to enter Ukraine[115]. The special service motivated its decision by the threat to the national security posed by Abdulkarimova. Deputy of the Verkhovna Rada Dmytro Linko submitted a deputy request regarding the reasons for non-admission to the territory of Ukraine. In the reply the SSU provided the cause for its decision concerning Abdulkarimova: she is a relative of persons suspected of terrorist and extremist activity. Her brother, Magomed Abdulkarimov, and nephew, Magomed (now deceased) are in the list of Rosfinmonitoring (the list of persons reasonably suspected of involvement in extremist or terrorist activity). Thus, SSU referred to a decision of the state authorities of the foreign state that at that time carried out and continues to carry out aggression against Ukraine.

Since the information in the decisions of SSU (the risk of danger), does not correspond to reality, in Abdulkarimova's opinion, the decision about the ban on entering Ukraine was appealed against in the administrative court. The examination of her case is ongoing. At the request of the SSU, the court is considering the case in the closed procedure.

Also, **sometimes there are cases of illegal refusal on provision the status of a refugee or a person in need of additional protection.** It mostly concerned the persons who were once refused by the SMS of Ukraine, but in whose cases the new circumstances developed which the SMS should examine. There are reasons to assume that the relevant instruction was given to the regions from the central body of the SMS of Ukraine.

In addition, sometimes a question arises, **whether the information on asylum seekers is transmitted to the state authorities of the country of origin**. If the employees of the SMS of Ukraine, most probably, do not maintain direct ties with migration services of the countries of CIS, then when sending a request to the SSU on the grounds that

make it impossible to recognize an applicant as a refugee or a person in need of additional or temporary protection, there are grounds to suspect such informal ties and information leaks, given the numerous facts provided in this report.

Those who are under temporary or extradition arrest are in a particularly vulnerable state.

First, the provisions of Art. 583 of the CCP of Ukraine **do not provide any alternative to the application of interim arrest.**

Second, as a result of application of interim arrest for up to 40 days and extradition arrest for up to 12 months, in practice in extradition cases concerning the asylum seekers the provisions of para. 2 of pt. 3 of Art. 197 of CCP of Ukraine concerning the maximum term of detention of a person during the pre-trial investigation are always violated, since the person is held in custody for 12 months (the maximum term of extradition arrest) plus 40 days (maximum term of interim arrest), because all that time is taken by the examination of their application on recognition as a refugee or a person in need of additional protection, as well as appeal against the negative decision of SMS of Ukraine and the courts.

It could be seen from the systemic interpretation of that norm and the norms of Art. 183 para.6, Art. 583 para.1, Art. 583 para.9, Art. 584 para.1 of the CCP of Ukraine and §1(f) of Article 5 of ECHR that the interim arrest and extradition arrest are special kinds of preventive measures, and in case of their consequent application to one detained person they constitute one uninterrupted deprivation of liberty of a person, the term of which can be counted from the moment when he or she is forced to stay with an authorized official by force or by obeying an order or in the premises designated by an authorized official (pt.1 of Art. 209 of the CCP of Ukraine).

From the position of the European Court of Human Rights the arrest and subsequent detention of a person for any reasons is one uninterrupted deprivation of liberty, about which the Court spoke, in particular, in the following cases:

Polonskiy v. Russia case: *"The Court believes that a person who states about the violations of paragraph 3 of Article 5 of the Convention concerning the length of his or her detention, complains about the ongoing situation that should be seen as a whole, and not divided into several episodes in the order suggested by the Government" (§132)*[116].

Solmaz v. Turkey case: *"The Court notes that in this case the detention of the applicant started when he was arrested on 23 January 1994 for the purposes of paragraph 3 of Article 5 of the Convention before being convicted (§34). Thus, the Court believes that in this case, the numerous consequent periods of detention of the applicant should be seen as a whole" (§36)*[117].

Also, in Ukraine there is a widespread practice of repeated arrests, which violates the right of the persons to freedom and personal inviolability and does not correspond to the international obligations of Ukraine. A clear illustration of this problem is the case of Karpenko vs Ukraine, which is kept in the European Court of Human Rights and which was already communicated. Mr. Karpenko, a resident of the Russian Federation, was detained in Ukraine with the aim of extradition. After the first detention there were 4 more arrests: each time after the appellate court's decision about the prosecutor office's failure to observe the procedural legislation and the need to

release the detainee from custody in the courtroom, Karpenko was again detained by the prosecutor's office after a new petition for the application of extradition arrest to him. All five times the circumstances of his case remained the same, and the petitions of the prosecutor's office were based on the same arguments. Each arrest of Karpenko was subsequently approved by the investigating judge and quashed by the appellate court, in order for the detention process to subsequently start anew. Such practice was also seen in other cases concerning the extradition arrests: Zelimhan Belharoyev, Shahban Isakov, Arif Jabarov and others. Such repeated arrests are a kind of bullying for the people who are released in the courtroom or from SIZO and then are immediately detained before leaving the courthouse.

The cause of such violations is the arbitrary interpretation of CCP by the prosecutors and investigating judges. In practice, if an investigating judge released a person from extradition arrest, such person can be re-arrested on the basis of pt.13 of Article 584 of CCP: *"The release of a person from the extradition arrest by the investigating judge does not prevent its repeated application with the aim of handing the person over to a foreign state for implementation of the extradition decision, unless provided otherwise by an international treaty of Ukraine".* Our article concerns the repeated arrest for the actual transfer of a person, meaning after the end of the extradition enquiry and the adoption of decision about the extradition. Also, for the actual transfer, all procedures for denial of asylum in Ukraine up to the appellate instance must be completed. Instead, due to inaccuracy of wording of pt. 13 of Article 584 of the CCP, the prosecutors and investigating judges provide a much wider interpretation of this Article and use the repeated arrest in the same circumstances at once after the release of the person from custody. It happens even with release from custody by a court of a higher instance – an appellate court, which generally destroys the logic of the judicial system.

Such interpretation of the article creates simultaneously three practical problems: first, it essentially destroys the meaning of a court decision as a binding one, since the decision of the investigating judge about the release of a person from custody is not relevant for the repeated arrest of the person; second, the principle of hierarchy of the judicial bodies is violated, in the cases when an investigating judge approves the decision about the extradition arrest, after the decision about the release by the appellate court, de facto quashing the decision of a higher instance court; third, the person detained under this Article, becomes a hostage of an endless cycle of arrests and releases in case of the prosecutor's office detains the person and sends the petition for the arrest at once after the release of that person from the previous arrest.

That practice, as well as the inaccuracy of the wording of Ukrainian criminal procedural legislation, contains significant violations of the European Convention on Human Rights – of its Articles 5 and 13, which establish the right of the persons to freedom and personal inviolability and to effective remedy. They also contradict the case-law of the European Court, which speak of the inadmissibility of a broad interpretation by states of such a basic right as the right to liberty[118], as well as the need to build the legislation on detention of persons on the principle of legal certainty[119], when the effects of the law are foreseeable, meaning that a person, after committing a certain action, has to clearly understand what consequences it will entail[120].

In addition to the above problems, the asylum seekers who are in interim or extradition arrest face the physical impossibility to file an application for recognition as a refugee or a person in need of additional protection, because not all regional centres with the pre-trial detention centres that hold the persons in interim or extradition arrest, have

one of 13 inter-regional units of the SMS of Ukraine, authorized to accept and examine the applications for the recognition as a refugee or a person in need of additional protection.

Furthermore, the provisions of Article 7 pt. 1 of the Law of Ukraine "On refugees..." require the personal filing of such application, which is impossible for the persons in custody. In practice such collision leads to the situation in which the defender of an asylum seeker numerously files an application of his client to SMS of Ukraine, receives refusals to accept it, appeals against it in SMS of Ukraine in administrative procedure or in court, and only after that a representative of the SMS of Ukraine visits the asylum seeker in SIZO.

There are many evidences of the cooperation of SSU with authoritarian regimes of other countries.

Azerbaijan is ruled by the authoritarian regime of Ilham Aliyev, who is the president of the republic since 2003. Prolonged persecution has weakened formal political opposition. In recent years, there has been strong pressure on civil liberties, which leaves citizens and civil organisations with few possibilities of public expression of opinion[121]. The authorities activated the stifling of the critics of the regime, who escaped the country.

A well-known Azerbaijani journalist and dissident **Fikrat Huseynov** was detained by the State Border Service of Ukraine in Boryspil international airport on 14 October 2017. While boarding the flight to Dusseldorf it turned out that Mr. Huseynov was internationally wanted at the request of Republic of Azerbaijan. On 17 October he was arrested by Boryspil city district court for 18 days with the aim of subsequent extradition. It should be noted that the court provided 18 days of interim arrest in accordance with the European Convention on the Extradition of Offenders, and not as usual – 40 days, according to Art. 583 of the CCP. The authorities of Azerbaijan stated that in 2008 Fikrat Huseynov left the country allegedly with the aim of organisation of illegal migration of individual citizens from the Republic of Azerbaijan. The journalist was suspected of forging the documents about the persecution of certain persons for their ideological or political views, or social affiliation and presented this information to the foreign migration bodies. As a result, several persons received the refugee status in several European countries. In reality Fikrat Huseynov left Azerbaijan after he was kidnapped, brutally beaten and stabbed with a knife in his neck. The kidnappers were not found. He received the refugee status, and later the citizenship of the Kingdom of the Netherlands.

A week before his arrest Fikrat Huseynov entered Ukraine by plane without problems. The aim of his visit was to open the Ukrainian branch of the opposition Azerbaijani satellite TV channel "Turan.TV". The journalist stated that the entire time in Ukraine he was monitored by the special services. On 27 October Fikrat Huseynov was released from custody by Shevchenko district court of Kyiv city on the guarantee of the People's Deputy Mykola Knyazhytsky and the director of advocacy centre of UHHRU, Boris Zakharov.

From the courtroom the prosecutor Ruslan Sutko went to Kyiv SIZO, where the journalist used to be detained, and illegally took his passport. Only two months later, during the extension of the preventive measure the prosecutor's office managed to receive an additional obligation for Huseynov: "to deposit a passport of a citizen of the Kingdom of the Netherlands".

Almost at once after that it became known through the diplomatic channels that the Interpol File Control Commission deleted the record about the search for Fikrat Huseynov due to apparent political persecution. However, the National Police, the prosecutor's office and the courts remained indifferent to this news and refused to file the necessary requests.

For six months there were no significant developments in the case. Fikrat Huseynov had to remain in Ukraine, and the prosecutor's office of Kyiv region, responsible for the extradition enquiry, did not hurry. During that time only two requests were sent to SMSU to clarify whether the journalist filed an application for the provision of a refugee status in Ukraine or to receive Ukrainian citizenship. Only on 2 April 2018 an investigating judge from Pechersky district court of Kyiv refused to again extend the preventive measure concerning Fikrat Huseynov. That development was so unexpected for the prosecutor, Sergiy Ostapets, who was present in the courtroom, that he took the journalist's passport from the secretary of the court hearing and left the courthouse. Unfortunately, neither the applications by Huseynov himself, nor a statement about the crime from the People's Deputy Mykola Kniazhytsky helped to return the passport that was seized illegally. Huseynov was forced to remain in Ukraine, without any court-sanctioned limitation.

Despite those gross violations of the law by the prosecutor's office, in several days the court again received a petition about the selection of the preventive measure for the journalist in the form of a personal undertaking not to leave Kyiv without notifying the prosecutor and to deposit his passport to the prosecutor's office. However, the investigating judge could not examine this petition in one hearing, and announced a break. After the court closed the hearing, Dmytro Mazurok, a lawyer, approached the secretary and took his ID and the passport of Fikrat Huseynov. Despite the prosecutor's protests, the court refused to intervene and cover another violation of the law by the prosecutor's office. It allowed Fikrat Huseynov to legally leave Ukraine on the next day. He crossed the border with Poland and safely arrived to the Netherlands. In his case we again faced the informal cooperation of Azerbaijan special services with SSU and the prosecutor's office.

The story of an Azerbaijani blogger, a citizen of Russia, **Elvin Isayev** confirmed: SSU cooperates with the special services of authoritarian regimes, in particular, Azerbaijan. Mr. Isayev arrived to Ukraine, seemingly saving himself from the persecution by the Russian and Azerbaijani authorities. ECtHR applied Rule 39 of its Rules, by prohibiting Russia from extraditing him to Azerbaijan after the request of the authorities of that country. In Ukraine he turned to a human rights activist, Boriz Zakharov, asking to arrange his illegal departure from Ukraine to the EU, and rejected the offer of help in filing the application for the refugee status. After B. Zakharov refused to assist in illegal actions Elvin Isayev disappeared. According to a source in SSU, Isayev's enforced disappearance was arranged by this Ukrainian special service. Later Isayev "was found" in Azerbaijan[122]. Soon all accusations were lifted from him. On 9 July 2020 European Court of Human Rights terminated the case of Isayev vs. Azerbaijan and Ukraine given the lack of the applicant's wish to continue it[123]. The sum of facts and the information of the SSU sources gives the human rights activists the grounds to believe that Isayev's enforced disappearance was a special operation by the special services of Ukraine and Azerbaijan with the aim of evacuation of an agent after a failed provocation of the human rights activists.

Belarus is ruled by the authoritarian regime of Olexandr Lukashenko. Belarus is the only European country that is not a member of the Council of Europe.

The highest penalty in the republic is the death penalty. The citizens of Belarus cannot freely enjoy their civil and political rights, the freedom of expression is very restricted[124]. Hundreds of people were arrested for participation in various peaceful protest actions, dozens of them were convicted and found to be prisoners of conscience[125]. On the international arena Belarus is an ally of RF. It is dependant on Russia, by essentially exchanging a part of its sovereignty for cheap energy. Belarus has recognized the annexation of Crimea by Russia. In Ukraine the situation with the refugees from Belarus is very similar to the situation with the refugees from RF. The uncertainty of the status of the foreign volunteers, unfriendly attitude of the competent state bodies is also relevant to the Belarusians. Those factors create danger for the Belarusian asylum seekers in Ukraine. Furthermore, Belarus is used as a transit territory by the refugees and Russian special services. It was mentioned before that a Ukrainian political prisoner, **Pavlo Gryb**, was lured to the territory of Belarus, and a Russian political prisoner, Volodymyr Yegorov, was detained in Belarus by KGB and handed to RF.

A Belarusian volunteer, a fighter from UVC, **Taras Avatarov**, was sentenced in Belarus to 5 years of imprisonment for *"illegal acquisition, keeping, transporting and wielding an explosive device and moving an explosive device through the customs border in secret from the customs control"*[126]. Taras Avatarov was officially detained at the Minsk railway station, however, his mother, Lyudmyla Pospekh, commenting her application to the President of Ukraine, states that Avatarov was kidnapped in Kyiv by Russian special services and handed to the officers of KGB of Belarus, who placed him in a car and brought first to Gomel, and than on train to Minsk. According to her, her son was escorted the entire way until the railway station in the capital of Belarus. On the basis of communication with her son she believes that an improvised explosive device for which her son was convicted, was planted on him on Ukrainian-Belarusian border[127]. It is difficult to imagine how it could be carried out without the contribution of Ukrainian special services.

In August 2016 two Belarusian volunteers who fought for Ukraine in ATO area, requested asylum in Poland. It is known from a native of Gomel, Rudolph Yegorenko that he and his countryman, a resident of Minsk, Dmytro Belogortsev, who participated in hostilities in the east of Ukraine in 2014 as members of voluntary battalion "Donbas", after being dismissed from the battalion returned to SMS of Ukraine, but received a refusal which they unsuccessfully challenged in the courts. Since they had no sources of subsistence in Ukraine and clear prospects for gaining legal status in Ukraine, and in Belarus they risked being subjected to criminal prosecution for participation in ATO, Yegorenko and Belogortsev illegally crossed the Ukrainian-Polish border and and asked the Republic of Poland for asylum[128]. They currently have refugee status in Poland. It was told by Yegorenko personally.

On 18 June 2019 a former Belarusian political prisoner, **Olexandr Frantskevich**, who went to the State Migration Service to renew his temporary residence permit in Ukraine, was kidnapped by persons who introduced themselves as SSU officers, and taken to the border with Belarus.He could not be reached until 3 am. Then he called his mother from abroad and said that he was deported to Belarus. According to Frantskevich, he was met by the SSU officers while leaving the institution. Without stating their names, they showed him "The decision from forcible return from Ukraine": Olexandr is prohibited from appearing in our country for three years because his *"activity contradicts the interests of provision of national security of Ukraine, its sovereignty, territorial integrity and constitutional order".* On the way to the border he was three times beaten and strangled, his phone was seized[129].

With the beginning of the mass protests in Belarus after the falsification of the results of presidential election in that country, Ukraine has announced its readiness to accept refugees from there. According to Olexiy Skorbach, a lawyer, Ukrainian migration agency does not obstruct the asylum seekers from Belarus.

Dozens of members and sympathizers of banned opposition organisations, such as the Party of Islamic Restoration of Tajikistan or "Group 24", as well as their relatives go abroad from Tajikistan to seek protection.

In summer 2017 employees of the Department of SSU in Kharkiv region detained a citizen of Tajikistan who was legally on the territory of Ukraine. He had to ask for asylum in Ukraine due to his affiliation with the organisation "Group 24", which represents the secular opposition to the local authoritarian regime. According to him, the SSU officers have beaten him after the arrest, photographed him against the black flag with Shahadah (the symbol of faith in Islam) that belonged to them and called him a member of ISIS (Islamic State). His passport with a mark of entry into Ukraine was illegally confiscated and he was forcibly returned to Chernihiv region. Since the confiscation of passport was not documented by the representatives of SSU, the citizen of Tajikistan whose name is not disclosed found himself in the territory of Ukraine as a person who remains there illegally. Despite losing the passport he turned to the State Migration Service asking to provide him the refugee status but received refusal. That citizen of Tajikistan turned to KHPG for legal assistance in challenging the decision of the migration service of 05.01.2018 on the refusal to arrange the documents for the examination of his application for a refugee status.

In January 2018 a lawyer challenged the migration service's refusal in the district court. In May of the same year the court quashed the decision of the migration service, which, in its turn, disagreed with that decision and challenged it in the appellate court, however, it was refused. The examination of the asylum seeker's application is ongoing. The citizen of Tajikistan is at liberty.

In May 2018 SSU officers detained a citizen of Tajikistan, **Murodali Khalimov**, in Kyiv suburbs, after the decision of the Prosecutor General's Office of Ukraine. On the same day he and his lawyer, Olexiy Skorbach, had to go to the office of the State Migration Service of Ukraine, to re-apply for the provision of the refugee status. He had filed such application before, but unsuccessfully. The courts upheld this decision. The attempts of his lawyer, O. Skorbach, to learn about the location of his client and meet him were unsuccessful. M. Khalimov was also deprived of the possibility to contact his wife. The lawyer's appeals to SSU were left unanswered.

After the lawyer was notified about M. Khalimov being kidnapped by unidentified people, he turned to the State Migration Service on behalf of his client with the application for providing protection in Ukraine and with a copy of the application he turned to the PGO informing it of the fact that he applied for the status on behalf of the client. Thus, according to the current legislation of Ukraine, M. Khalimov was not to be extradited.

On the evening of the same day O. Skorbach filed an application to the European Court of Human Rights for an urgent application of Rule 39 of the Rules of Court to stop the extradition of M. Khalimov. On the same day ECtHR in its reply prohibited the extradition of M. Khalimov before the examination of his case on merits. However, as the Prosecutor General's Office of Ukraine said in the reply to the request of the lawyer, O. Skorbach, at that time Khalimov was already handed to the officers of the special services of Tajikistan.

According to Khalimov's relatives, he was held for several months and questioned on the base of the 201st division of the Armed Forces of the Russian Federation, where they demanded confessions from him that the training camps of the so-called "Islamic State" were allegedly located on the territory of Ukraine. He was soon sentenced in a private session by Tajik court to 23 years of imprisonment in the maximum security level colony. He was incriminated with the participation of illegal armed formations on the territory of another country, he was deprived of the right to fair trial[130].

In October 2020 unidentified persons in Mykolaiv dragged **Alisher (Ali) Khaydarov**, who then had a biometric passport of a resident of Ukraine, from the taxi. The taxi driver whose car Khaydarov entered, states that the persons in civilian clothes shouted during the arrest that they are SSU officers. He notified A. Khaydarov's wife about that. In two days A. Khaydarov phoned his mother in Tashkent and informed her that he was in one of the detention centres on the territory of Uzbekistan. In 2009 A. Khaydarov arrived to Ukraine and turned to migration service asking for asylum. However, he was denied, and the courts confirmed the lawfulness of such decision. In Uzbekistan Khaydarov was accused of spreading the extremist materials and the creation of an extremist group. He denies the accusations. A.Khaydarov was essentially kidnapped and in 24 hours from the moment of arrest was forcibly taken to the territory of Belarus. In Uzbekistan he was not allowed to see a lawyer for a month. According to Nazokat Pulatova, A. Khaydarov's wife and the mother of his four children (three of them were born in Ukraine and are citizens of Ukraine), after the migration service denied him in providing asylum, Alisher with the help of an employee of the Department of SSU in the Mykolaiv region received the biometric passport of a citizen of Ukraine on the name of Ali Khaydarov. According to N. Pulatova, the SSU employee who was called Olexandr, regularly called Alisher and demanded payment for the biometric passport. Before his disappearance Alisher told her that he refused to pay and something may happen to him. The passport data of that employee of SSU are known to human rights employees[131].

Unidentified persons, likely SSU officers, kidnapped from the colony No. 64 (Poltava) and took in an unknown direction a citizen of Uzbekistan, **Rakhmedin Saparov**. It is the SSU officers who traditionally provide operational support for extradition cases against foreigners who are accused in their homeland of so-called crimes against the state. A lawyer, Oleg Maksymenko, reported that several days before the release R. Saparov filed an application to the State Migration Service of Ukraine for provision of a refugee status, through the management of the colony. O. Maksymenko handed a copy of his application to the local department of SMSU. He was waiting for R. Saparov in front of the colony checkpoint on the day when he was to be released. However, R. Saparov did not appear. And the colony employees first stated that R. Saparov left the territory of the colony before the arrival of the lawyer. Later they said that R. Saparov left the colony accompanied by unidentified persons who left the territory of the colony with him. The management of the colony did not inform the lawyers about the persons who took R. Saparov. For his request to the State Border Service the lawyer, O.Maksymenko, received a response which stated that R. Saparov left Ukraine and went to Belarus[132].

In October 2017 Shevshenko district court of Kyiv arrested a blogger from Kazakhstan, **Zhanara Akhmetova**. It was petitioned by the prosecutor's office of Kyiv region. In Kazakhstan Akhmetova was wanted through "Interpol", since, according to Kazakh special services, she violated the rules of probation She was sentenced to 7 years of imprisonment for the fraud, but the sentence was suspended until her child reaches the age of 14 years[133].

However, on the moment of escape from Kazakhstan, Akhmetova was subjected to pressure by the Committee of State Security (CSS) for her activity in Internet as an opposition blogger, namely – for her critical publications in social networks. She was numerously taken to the police and demanded to stop making the publications. Since Akhmetova did not agreed to the compromise, the police officers prepared a case for her real imprisonment. After that Akhmetova and her minor son illegally left the territory of Kazakhstan and arrived in Ukraine. She turned to the SMS of Ukraine with the application about the provision of a refugee status, but was denied. She was deprived of the possibility to apply to cassation instance and she was arrested. Soon the prosecutor's office stated that it conducted the extradition enquiry and did not see obstructions to satisfy the request of Kazakh colleagues to extradite Akhmetova. After the intervention of human rights activists and the deputies from Ukrainian parliament Akhmetova was released from custody – a deputy, Svitlana Zalischuk, took her on bail. The lawyers do not disclose her place of residence in Ukraine for security reasons[134]. After the refusal to provide the refugee status, confirmed by the decisions of Ukrainian courts, Zhanara Akhmetova re-applied to SMSU with a similar application. According to her lawyer, Olexiy Skorbach, the court took into account the SSU letter in which the special service recommended the SMSU to not provide Akhmetova with the refugee status.

In September 2020 the Ukrainian media reported the disappearance of a citizen of Turkey, **Isa Ozer**. Soon it became known that he was in Turkey, which he left and asked for asylum in Ukraine. In Turkey the media stated that Ozer is an activist of a prohibited terrorist Labour Party of the Kurdistan. However, on the moment of enforced disappearance in Odesa, where Ozer lived, his application for a refugee status was being examined by SMSU. Thus, according to the current legislation, he could not be extradited to another state. However, Ozer was sent to Turkey. Some Ukrainian media claim that the detention and deportation of a Kurdish activist who is considered a member of the terrorist Labour Party of Kurdistan, was conducted with support or direct participation of SSU[135].

Recommendations

01 *To the Verkhovna Rada of Ukraine:*

1.1. Adopt the law on amending the Law of Ukraine *"On the Security Service of Ukraine"*, providing:

- introduction of the principles of parliamentary control over the forming of the management of SSU and its activities;
- introduction of various reports about the activity of SSU in the parliamentary committee on national security and defence with the publication of the open part of those reports;
- deprivation of SSU of the powers of conducting the inquiry, investigation and other law-enforcement powers;
- introduction of the principle of the freedom of information "The information is classified, not the document";
- introduction of a public annual report on depersonalized information on the use of wiretapping by law enforcement agencies, which would publish depersonalized data: on the number of applications for the wiretapping of phones, number of permissions provided, number of indictments submitted to the court, made with the use of such data, the number of sentences delivered by the courts in such cases – for each operational unit separately;

1.2. Adopt a law on amending the Law of Ukraine *"On refugees and persons in need of additional or temporary protection".*

1.3. Adopt a law on amending the CCP according to international obligations of Ukraine and the practice of ECtHR in **section 44** *"Extradition of persons who committed criminal offenses".*

02 *To the Government of Ukraine:*

2.1 Take measures to fulfil Ukraine's international obligations in the field of ensuring the rights of asylum seekers, refugees, persons in need of additional protection, stateless persons; **improve the application of alternative preventive measures** when resolving the issue of forced expulsion of foreigners and stateless persons, in particular, concerning the provision of the right to petition for the application of an alternative preventive measure (guarantee or bail) to such persons and their representatives; **expand the range of guarantors** to include individuals; establish clear criteria for judges to determine that the guarantor "deserves special trust"; **remove the possibility** to apply the detention in facilities to asylum seekers who are in the procedure of examination of their applications for recognition as refugees or persons in need of additional protection;

2.2. Develop and introduce to VRU a draft law on amending the Law of Ukraine *"On refugees and persons in need of additional or temporary protection",* prepare the amendments to the Order of the MIA of Ukraine No. 649 of 7 September 2011, in particular, in the part concerning the creation of a procedure of accepting and examining the applications for the recognition as a refugee or a person in need of additional protection, filed by the persons who were denied entry to Ukraine, persons who are in pre-trial detention centres in interim or extradition arrest, persons held in the facilities for interim retention of foreigners; **creation of hierarchy of the sources** of information about the country of origin of an asylum seeker and the criteria of their reliability, validity and relevance; **creation of a procedure** for temporary issuance of identity documents from the personal cases of asylum seekers at their requests; **increasing the security and status** of the Certificate of Applying for Protection in Ukraine.

2.3. Prepare the propositions concerning the creation of a procedure for recognition as a stateless person, according to the international obligations under the UN Conventions on the status of stateless persons (of 1951) and on the reduction of statelessness (1961).

2.4. Develop and introduce to VRU a draft law on amending the CCP in Section 44 *"Extraction of the persons who committed criminal offenses (extradition)"* according to the international obligations of Ukraine and the practice of ECtHR. In particular, provide in Article 583 of the CCP the alternative preventive measures to interim arrest, and in Art. 584 of the CCP remove the possibility of repeated arrest without new circumstances or exhaustion of all mechanisms of legal defence that can stop the decision on extradition.

03 *To the Security Service of Ukraine:*

3.1. Stop the criminal practice of kidnapping and unlawful enforced deportation of people.

3.2. Check the personnel for the presence of personal connections with the representatives of authorities or special services of the foreign states;

3.3. Introduce the practice of providing open part of documents containing information that constitutes a state secret upon information requests;

3.4. Do not exceed the competence limits, provided by the law;

3.5. Remove informal influence on central executive authorities in the structure of MIA of Ukraine.

3.6. Check the personnel for the presence of bigoted and xenophobic beliefs that are incompatible with the service.

05 ACCESS TO INFORMATION. PROTECTION OF THE STATE SECRET

Information is the air of democracy. Only a knowledgeable society can exercise control over the activity of the authorities, to force them to serve the civil interests. Conversely, bad government needs secrecy, to hide its inefficiency, waste and corruption. Therefore the openness of government, the publishing of information about what and how it classifies, is always a relevant political issue, a litmus test that indicates its real intents and plans.

In Ukraine, public relations related to the classification of information as a state secret, secrecy, declassification are regulated by the Law "On state secret", adopted in January 1994. That Law was a significant step on the way from the total classification of information in the times of USSR to the regulation of the issues of secrecy, inherent in a democratic country.

The law "On state secret" defines in Art. 1 a state secret as a kind of secret information in the area of defence, economics, science and technology, foreign relations, state security and law enforcement, the disclosure of which can harm the national security of Ukraine and which are protected by the state because of that. The level of secrecy of information is defined by the possible harm caused as a result of its disclosure, and implements various restrictions according to the degree of secrecy.

The criteria of definition of the level of secrecy were initially entrusted to the State Committee of Ukraine for State Secrets and Technical Protection of Information. That committee was also a specially authorized special authority in the field of provision of protection of state secret. However, at the beginning of 1999 the committee was liquidated, and its powers were transferred to SSU.

Art. 8 lists the information in various areas of the state activity that can constitute a state secret. The presence of such article is, undoubtedly, a significant positive feature of the Law. However, in this list there are such questionable characteristics in the area of defence as the number of the Armed Forces of Ukraine and other armed formations (note that in accordance with paragraph 22 of Article 85 of the Constitution, the approval of the number of all military formations is the authority of the Verkhovna Rada of Ukraine, meaning that it should be defined by the laws – open public regulatory acts – and, therefore, cannot be a secret information); in the field of state security and law enforcement the financing of intelligence, counterintelligence and operational and investigative activities.

It should also be noted that the Law in Art. 8 prohibits to classify any information, if it would limit the contents and scale of the constitutional rights and freedoms of a person and citizen, harm the health and safety of the population. It is not allowed to classify the information about the state of environment, the quality of food and household items, the influence of goods (works, services) on life and health of people; about accidents, catastrophes, dangerous natural phenomena and other emergencies that happened or can happen and threaten the safety of the citizens;

about the health of the population, its standard of living, including the food, clothes, residence, medical assistance and social security, as well as social and demographic indicators, the condition of the law enforcement, education and the culture of the population; about the facts of violations of rights and freedoms of a person and a citizen; illegal actions of state authorities, local governments and their officials and officers, and other information, the access to which according to the laws and international treaties of Ukraine cannot be restricted.

Art. 9 of the Law establishes that the classification of information as a state secret is carried out by a reasoned decision of the state expert on secrets. State experts in the Verkhovna Rada are the Chairman of the Verkhovna Rada, in other bodies of state power – other officials to whom these functions in the relevant branches of state activity are assigned by the President of Ukraine at the proposal of the head of the relevant body. Article 9 contains a wide list of powers, rights and duties of the state experts. In particular, the state expert determines the grounds on which the information should be classified as a state secret, provides an opinion about the harm to the national security of Ukraine in case of disclosure of a particular secret information, defines the level of secrecy of the information ("Of special importance", "top secret", "secret"), the term of secrecy (accordingly, 30, 10 and 5 years), the change of the level of secrecy of information and its declassification, and gives his opinions to SSU. SSU enters the information provided by the state expert, to the Code of Information Constituting a State Secret (hereafter – CICS), which is an *"act that lists the information that constitutes a state secret in the areas defined by this Law"*. This act is formed, approved and published by the Security Service of Ukraine. After the publication of CICS compliance with the requirements of protection of state secrets under this list becomes mandatory.

In 1999 the Law "On state secret" was significantly amended and it exists now in the edition of 21 September 1999, amended 18 times. Although some changes were positive, in particular, the international standard in the field of freedom of information *"the information is classified, not the document"* was implemented, in general it can be said that the changes cemented tendency to increased secrecy which began in mid-90s. They significantly extended the range of information, constituting a state secret. In particular, it is possible to classify the information *"about scientific, research, development and design works, the subject of which is the creation of the latest complex models of weapons, military or specialized vehicles, and other works of significant defence or economic importance or significantly affecting foreign economic activity and national security of Ukraine"*.

The wish to classify the information about the new samples of weapons is understandable, but, in our opinion, in general this is a fundamental mistake of the authors of the new version of the law, since classification in the field of science and new technologies only causes lagging in the future and the migration of experts.

Nowadays few people doubt that those societies in the modern world in which creative thought that is inspired by the information sphere develops more freely and quickly, develop more effectively. The most successful country in this sense is the United States, where there is the widest freedom of the information exchange, accordingly, the most scientific and cultural achievements. Ukraine has a noticeable tendency of restriction of access to information and freedom of information exchange. It seems the most dangerous in the future of the country comparing with other violations of human rights and fundamental freedoms, and here is why.

The information sphere is the main one, on which all political, administrative, economical and other decisions in the fields of human activity are based. Those decisions would be the more justified and efficient, the more information is used for making them. The most important political decisions are usually fixed on the legal level in some regulatory acts.

Thus, we have a three-level system of decision-taking: information, policy, law. It can be conventionally represented as a tree: *the roots, the trunk, the crown.* The tree is the bigger and stronger, the more developed his root system is. When on the legal (third) level the acts are adopted, that prohibit or limit the access of the participants of the problematic political discussions (second level) to the information (to the first level), the quality of the political decisions unavoidably degrades. The unnatural situation arises, when the crown does not allow the roots to feed the tree. It happens especially often in cases when the executive, or even parliamentary institutions try to limit the information flows. It is usually made with the best intents, however, societies affected by isolationism fall into stagnation, their intellectual elite migrates, and the economic complex turns into a raw material appendage of more open and therefore more dynamic neighbors.

As much as the new knowledge provides the possibility to efficiently solve the social problems, the restriction of access to information means unconditional inhibition of social development and contradicts the idea of the progress of science. As the Western philosopher of science of the twentieth century Paul Feyerabend said, in the interests of scientific progress, everything is permissible, because science is a collage, not a bureaucratically organised system. Therefore, we would repeat, the decision on the classification of information *"about scientific, research, development and design work…"* seems wrong. The state may and must limit the access to the information that is necessary for the implementation of law enforcement and security – information obtained at their own risk by the military and law enforcement agencies and which acts as information which is known a priori that its disclosure may cause harm. However, in no case it is possible to restrict the access to information, the future of the contents of which is unknown.

In our opinion, it is inadmissible to classify information *"on the results of inspections carried out in accordance with the law by a prosecutor in the order of the corresponding supervision over observance of laws, and on the contents of materials of operational and search activity, pre-trial investigation and proceedings on the issues of spheres referred to in this article"*, especially since the amount of information that can be classified as a state secret in the above areas of activity can be very large.

We would like to note that the Law "On state secret" does not contain the maximum term of classification. The third part of Article 13 of the Law provides for the President of Ukraine the possibility to extend the term of action of the decision about the classification after its expiry, on his own notion or on the basis of the suggestions of state experts on state secrets. In practice it leads to the classification of information of 40-, 50-years-old and older. In particular, it is absurd to keep in secret the information on the political repressions in the Soviet Ukraine. Everywhere in the world the term of maximum secrecy constitutes 30-40 years. Why do we keep in secret such old archived data? In our opinion, it is necessary to establish in the law the maximum term of classification – say, no more than 30 years.

Let us examine CICS in more detail. Under Art.12 of the Law, the changes and additions to it must be published in the official editions no later than three months from the date of receipt of the relevant decision of the state expert on secrets. CICS was first printed only a year and a half after the Law was adopted, on 18 August 1995 in "Uryadovy Kuryer", and it was numerously re-printed in various editions. But the first amendments to CICS, introduced by the orders of the State Committee of Secrets No. 2 of 29.9.95, No. 3 of 12.12.95, No. 1 of 16.01.96 and No. 2 of 6.02.96 were not published: first two are marked as "secret", last two are marked "for official use", which is a direct violation of the Law. Later the very CICS was marked as "secret" and was removed from all computer legal systems. In the system of the Information and Analytical Centre "Liga Zakon" it was even removed from the relevant issue of "Uryadovy Kuryer". Such classification is a gross violation of the legislation of Ukraine and the principles of the law, therefor Kharkiv Human Rights Protection Froup insisted that CICS should be declassified and published. The order of the Head of SSU of 1 March 2001 approved the new CICS, Each article of which, in addition to the content of information constituting a state secret, also contained the degree of secrecy, the term of classification and the registration number and date of the decision of the state expert on secrets, it was published three weeks later.

The current new Code of information constituting the state secret is approved by the Order of SSU No. 440 of 12.08.2005 and registered by the Ministry of Justice of Ukraine at No.902/11182 of 17.08.2005. It has been amended and supplemented 40 times in 15 years.

That document differs from the previous one by the fact that it contains the definitions of additional words and terms, each article also defines the institutions, the state experts of which included some information to the list of secrets. This, undoubtedly, is a positive feature of the new version of CICS.

The analysis of CICS raises questions about the expediency of some wording, as well as the legitimacy of classifying certain information as secret. And the first question concerns the definition of "composite indicators" (para. 6, general provisions) – "*for the perception of the unit of the term used in the texts of the articles of the CICS, in a broader sense than stated in the article*". Meaning that there is the possibility to expand the boundaries of the classified information at one's own discretion. For example, in such way under Art. 1.1.9 it is possible to classify, essentially, any activity of the state authorities and the military, directed at "performing of their tasks in peaceful time", including, for example, the misuse of troops.

It is unknown what is included in the constituent indicators in Art. 1.1.1, 1.1.2, 1.1.7, and even more so to the indicators that are integral components. Therefore, in this case, the possibilities of secrecy are simply expanded.

Under para. 22 of Article 85 of the Constitution of Ukraine *"approval of the general structure, number, definition of functions of the Armed Forces of Ukraine, the Security Service of Ukraine, other military formations formed in accordance with the laws of Ukraine, as well as the Ministry of Internal Affairs of Ukraine"* belongs to the powers of Verkhovna Rada and, therefore, cannot be a state secret. Therefore, from Art. 1.1.6 of CICS the information about the number should be removed from the list of secrets. The same concerns Art. 4.1.11, which classifies the staff, number of personnel and actual staffing of a number of military formations. But shy does it have to be a secret? Maybe to keep the funds for the maintenance of these services and the scope of their activities secret?

Why do the costs of weapons for the needs of armed formations (law-enforcement bodies) (Art. 1.4.7) constitute a state secret? Art. 4. pt. 5 of the Law of Ukraine "On democratic civil control over the military organisation and law-enforcement bodies of the state" provides the civil control based on *"transparency of national security and defence spending".*

It is not clear why it is necessary to classify the *"information on the medical (transport, telecommunication, postal, communal, repair) services"* under Art. 2.1.12, even if the scale of such services is disclosed. It is similarly not clear, why is the information on donor blood stocks in the regional state administrations and the Council of Ministers of AR Crimea (Art. 2.1.19) a state secret, although the same information concerning Ukraine in general does not constitute a state secret.

It is unclear how to deal with well-known objects of telecommunications, for example, such as TV towers, that are probably a part of mobilization capacity, and, therefore, the places of their location are considered a state secret (Art. 2.2.5), although hey are well-known to everybody.

Art. 3.1.5 prohibits, essentially, any analytical forecasts and assessments of activity of Ukraine in the international field, because in one way or another it can influence potential cooperation. If the article is used in such way, Ukraine will be a closed state with unknown aims of its foreign contacts and cooperation.

It is unclear why the volume of revenues from the export of military or dual-use goods poses a threat to the national interests and security of Ukraine (Art. 3.2.4). It should be noted that these issues are very lively discussed in the media, including the television, with the participation of weapon manufacturers, scientists and representatives of the authorities.

Art. 4.2.7, which at the request of all departments – MDI, SPSU, SFS, SSU, FIS, SSA – recognizes as a state secret *"the number of premises that are used confidentially, are prepared to use or were used"* for the performance of tasks of operational activity. It is unclear how a quantitative indicator can negatively affect the results of the operational and search activity, but its classification gives wide opportunities for fraud and corruption in the property sphere in each of those services.

Similarly, the classification of statistical data of the operational and search, counter-intelligence or intelligence activity (Art. 4.4.8) provides the wide opportunities for the violations of human rights without any responsibility for this. The article concerns such activities, enabling a quantification of the operational forces and means used to carry out these activities. But this cannot prevent the classification of such data, for example, as the number of sanctions for taking the information from the communication channels (telephones, cell phones, e-mails, Internet etc), the terms of those operational and search activities, and the consequences (how many such actions led to trial in the case for the investigation of which the wiretapping was used). However, wiretapping can be used for any purposes on the discretion of the special services, which was numerously stated by the higher officials, politicians, journalists etc.

Unclear is the classification of the funding provision with main and special means, weapons and military vehicles of the military formations and law-enforcement bodies (articles 4.5.1, 4.5.2). This makes it possible to classify the funds and misuse them.

It is unclear, the contents of which materials of pre-trial investigation and proceedings are referred to in Articles 4.12.1 and 4.11.16 accordingly, what can cause the classification of those elements by the state experts. If the disclosure of such information *"may harm the national interests and security"*, this information should constitute a state secret, and the classification in such context is referenced in articles 4.12.2 and 4.12.3, if not – the materials should be open. There is an impression that SBI, SCES, SMS, SPSU, NPU and SSU introduced the article 4.12.1 to CICS, in order to be able to classify any materials of pre-trial investigation at their discretion.

In our opinion, articles dealing with *"moral and psychological condition of personnel"* are subject to exclusion from CICS. In our opinion, the classification of this information is the height of bad faith and nonsense. The definition of the term *"Moral and psychological condition"* or the information about it is not provided by CICS – only the articles 1.2.1 and 4.6.4 concern the classification of the information about the moral and psychological condition in military formations (in Art. 1.2.1 – SPSU, SSSCPI, AFU, MIA, NGU, FIS, SSA, in Art. 4.6.4 – SPSU and SSU), which make it possible to establish their combat capability as a whole (Art. 1.2.1) and the ability to perform operational and service tasks (Art. 4.6.4). Even for general reasons it is clear that the moral and psychological condition is not only defined by the combat training (experts took care of it separately), but first of all the relations between the officers or ensigns and soldiers, between the soldiers themselves, meaning the so-called statutory (or non-statutory) relationships, living conditions and medical care, the possibility to communicate with relatives and friends of the soldiers, representatives of civil organisations etc., and have them visit the unit. Thus, the information about the *"hazing"*, the quality of food, the misuse of soldiers and other negative features of conscription can be considered a state secret. Then it is clear that information about psychogenic personnel losses is also a state secret (Art. 1.2.3). As for the information about the efficiency moral and psychological support for the training or use of troops that allow to establish their combat capability (Art. 1.2.1, 4.6.4), it is unclear what is meant – may be the efficiency of the above-mentioned indicators, or some secret psychological or psychogenic programs that can affect the combat capability. All of this can lead to significant violations of human rights, but Art. 8 of the Law of Ukraine On state secret" prohibits to classify the information about the facts of violations of rights and freedoms of a person and citizen.

By the way, since Articles. 1.2.1 and 4.6.4 concern the moral and psychological condition in general, without any signs that even if everything is fine within military and the moral and psychological condition is normal or high, it is still a state secret.

As for Art. 1.2.2 that classifies the *"information about the influence of the socio-political situation in the regions (areas) of location of forces on the battle readiness of the forces or moral and psychological condition of the personnel, which make it possible to establish their combat capability as a whole"* (the information is introduced by the experts of SPSU, SSSCPI, AF, MIA, NGU, FIS), it is a clear illustration of how the AF, the experts of which introduced to CICS all three of those articles (1.2.1, 1.2.2, 1.2.3) wish to close, separate the army from the society, which the army is supposed to protect. What did the experts mean that has to be classified – panic among the population, the attitude of the population to the use of army, the actions of the military concerning the civilians, large non-combat losses? And how can it be classified – only by surrounding the entire area with the involvement of troops. That will make it clear that the situation is not good. Besides, the same Art. 8 of the Law of Ukraine "On state secret" prohibits to classify the information about the emergencies, the state of law and order, the facts of violations of the rights of a person and citizen.

Those are very cynical and weird articles, which is confirmed by Art. 1.2.3 on the psychogenic personnel losses, which first of all depend on the moral and psychological condition of military in the regions where the military is involved. Although, the psychogenic losses may also appear due to bad faith, and sometimes the lack pf professionalism of the medical commissions that give permission to conscript clearly ill young men, which significantly undermines not only authority, but also the fighting capacity of the army.

In general, it is very strange that in our time, when the armed conflict with the Russian Federation continues, the leadership of the Armed Forces of Ukraine still believes that the more closed the army is from society, the higher the combat effectiveness of its personnel.

Based on the above, we believe that the articles. 1.2.1, 1.2.2, 1.2.3 and 4.6.4 should be fully removed from CICS.

03

THE CONCEPT OF REFORM OF THE SECURITY SERVICE OF UKRAINE

03

The analysis of the current structure and activity of the Security Service of Ukraine and influence on the social life

General review

The only law enforcement body of Ukraine that for 28 years of independence of the country saw almost no changes is the Security Service of Ukraine.

All this time, Ukraine has had a multi-vector movement: to the East, lately to the West, and during breaks remaining on the spot. For a significant time such policy of multiple vectors for Ukraine was justified, optimal and allowed to receive economical and political dividends on the terms of a profitable partnership, both in the East and in the West.

Ukraine's equal distance from a full-fledged clinch with any military-economic union of the world was giving the country a great chance of success on the world arena in its personal and original way, with all possible victories and defeats.

However, "thanks" to the Russian invasion in the East of our country, the vector of movement of Ukraine was finally defined as pro-Western, and the membership of the country in EU and NATO became the only possible salvation Ukrainian statehood in modern realities. By salvation we mean a chance for Ukraine to completely modernize the existing state model of governing the country, economical, social, bureaucratic and law enforcement systems, to finally get rid of the "legacy" of the USSR.

As you know, at the turn of the century it is possible to lose more than one generation of people. Therefore, at this historical moment the issue of Ukraine's survival is seen in the possibility to receive protection, experience and support from the countries of the Western Europe.

At the same time, a number of counter and mandatory regulatory requirements are logically put forward for Ukraine.

01 One of the oldest recommendations of the Western partners is the reform of SSU, the adaptation of its activity to the norms of NATO and EU, and the liquidation of functions not inherent to a modern special service. It is not a great secret that in its everyday job SSU continues to use the terminology, principles, methods, and in some cases the technical means of the formerly omnipotent KGB of USSR.

The urgency of the reform of SSU was realized by domestic politicians 20-25 years ago. But this entire time the actual reforming was hindered by political intrigue, backstage games and agreements. Besides, SSU was permanently involved in the redistribution of spheres of influence between elites, surveillance and wiretapping of the opposition parties and individual politicians and unlawful pressure on business in favour of interested persons or its own management.

Currently SSU detects, stops and investigates criminal offenses, which, according to domestic and Western experts, is uncharacteristic of a real secret service. In particular, we mean the termination of corruption-related crimes, fight against the smuggling of goods, organised crime, smuggling of narcotic and psychotropic substances, as well as investigation of crimes in the field of economics.

For the last 10 years the special service numerously became the object of accusations of unlawful pressure on business with the aim of personal enrichment of individual top managers. For example, there are hundreds of schemes, covered by the interests of SSU: import and export of walnuts, natural gas, oil products, activity of conversion centres, as well as state procurement in the field of medicine, building and lots of others.

In addition, individual managers and employees of the special service numerously became, and, in fact, will become participants of journalist investigations, during which a huge amount of movable and immovable property was discovered, registered for the relatives, and its existence cannot be explained by common sense.

02 Another important democratic wish of our partners is the introduction of a real and full parliamentary control over the activity of the special services. The current legislation provides the special services, such as the Security Service of Ukraine, Department of State Protection, Foreign Intelligence Service of Ukraine, and the Main Intelligence Directorate of the Ministry of Defence of Ukraine with special powers which allow them to not only restrict the human rights at their own discretion, but also violate them.

On the national level there is always the risk of abuse of power by the secret services for political purposes, in favour of interests of individual political forces or for commercial purposes. In the first place this concerns illegal collection of information about the opposition, political blackmailing, illegal wiretapping of opposition politics or the representatives of business.

A significant specificity of the work of special services is that a significant part of it is classified as "secret" or "top secret". It allows to avoid the public accountability, which all other state authorities are subject to.

Such secrecy does not contribute to fight against the corruption within the department. The practice of secrecy of income declarations of its employees that has been introduced by the special services is explained by the fact that they perform important state tasks, and declassification of their income declarations would allegedly negatively affect their personal safety. Thus it turns out that Ukrainian special services, as well as their employees, are beyond the social control.

At the same time the special services function on the taxes, paid to the budget by the population of the country, therefore the society has an objective reason and right to control the activity of the special services and receive reports about their activity.

Thus, it is necessary to create one specialized standing Committee within the Verkhovna Rada of Ukraine, which will deal with activity of the special services and will act as a public safety. That Committee would examine the cases related to the facts and complaints about the violations of the rights, freedoms and interests of individual citizens and legal entities by the special services.

In particular, the Committee must have the powers of control over the strategic policy of activity of the special services, to hear their heads on the subject of budget formation, receive the reports on the use of the budget funds, as well as reports on all other facts of activity of the special services, which became widely known, and responding to which requires the intervention of a parliamentary committee.

Thus, the independent parliamentary control will contribute to the provision of independent and, first of all, efficient performance of the functional duties by special services.

Analysis of the current structure and activities of SSU

On 20 September 1991 Verkhovna Rada of Ukraine adopted the ruling “On the creation of the national security service of Ukraine”. The same ruling liquidated the Committee of State Security of USSR.

On 25 March 1992 Verkhovna Rada of Ukraine adopted the Law “On Security Service of Ukraine”.

The Security Service of Ukraine is a state law enforcement body of special purpose, which ensures the state security of Ukraine, is subordinated to the President of Ukraine and controlled by Verkhovna Rada of Ukraine.

Currently a number of the Laws of Ukraine was adopted that regulate the activity of the special service: the Constitution of Ukraine, the Laws of Ukraine "On the Security Service of Ukraine", "On the operational and search activities", "On the foundations of prevention and counteraction of corruption", "On organisational and legal bases of fight against organised crime", "On state secret", "On the fight against terrorism", "On counterintelligence activity", "On general structure and numbers of the Security Service of Ukraine", "On amending the Law of Ukraine "On information", "On access to public information", "On citizens' appeals", "On interim measures for the period of anti-terrorist operation", "On the provision of rights and freedoms of the citizens and the legal regime in the temporarily occupied territory of Ukraine".

Official site of the Security Service of Ukraine https://ssu.gov.ua.

П О С Т А Н О В А
ВЕРХОВНОЇ РАДИ УКРАЇНИ

Про введення в дію Закону України
"Про Службу безпеки України"

(Відомості Верховної Ради України (ВВР) 1992, N 27, ст.382)

Верховна Рада України **п о с т а н о в л я є:**

1. Закон України "Про Службу безпеки України" (2229-12) ввести в дію з моменту його опублікування.

2. Кабінету Міністрів України до 1 липня 1992 року привести у відповідність з цим Законом постанови і розпорядження Уряду України, що стосуються діяльності Служби безпеки України.

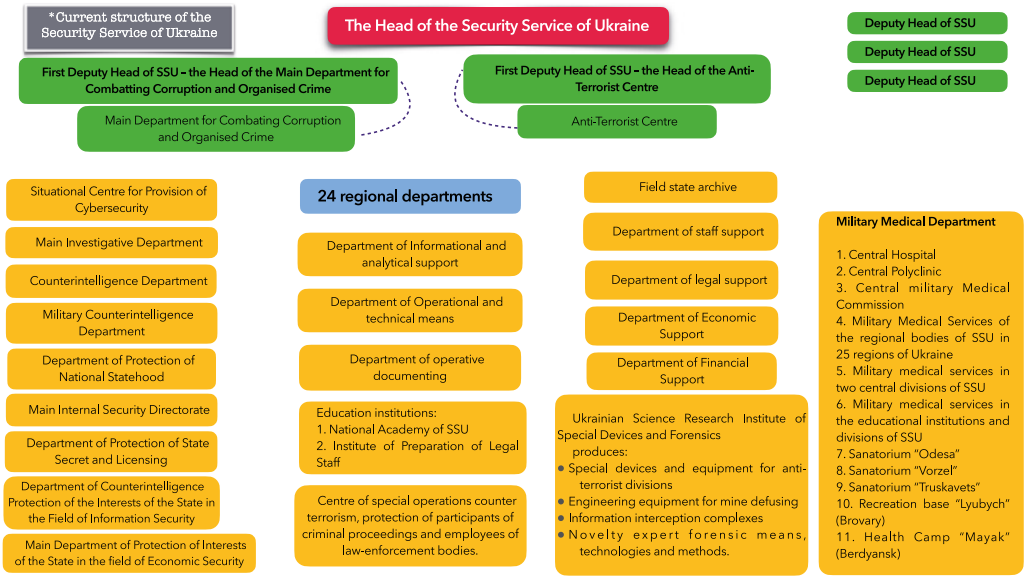
3. Службі безпеки України, відповідним міністерствам, державним комітетам та відомствам України до 1 липня 1992 року забезпечити перегляд відомчих нормативних актів та приведення їх у відповідність із зазначеним Законом.

4. Визнати таким, що втратив чинність, пункт 4 Постанови Верховної Ради України від 20 вересня 1991 року "Про створення Служби національної безпеки України" (1581-12).

Голова Верховної Ради України І. ПЛЮЩ

м.Київ, 25 березня 1992 року
N 2230-XII

The Head of SSU is appointed and dismissed by Verkhovna Rada of Ukraine at the proposal of the President of Ukraine. The Head has two first deputies and three deputies.



The Central Directorate of the Security Service of Ukraine has 3 **Main Directorates, 13 Departments, 2 Directorates**, as well as **24 regional directorates**.

Regional bodies have been established within the Security Service of Ukraine (regional departments), as well as their inter-district, district and city units, location and territorial competence of which may differ from the administrative-territorial division of Ukraine. In the interests of the state security, the bodies and units of SSU may be created on separate state strategic objects and territories, in military formations.

The regional bodies of SSU are independent of the local governments and executive bodies and are not subordinate to them. However, when needed, they can coordinate their job.

The heads of the regional bodies are appointed by the President of Ukraine at the proposal of the Head of SSU of Ukraine.

At the same time, the Constitution of Ukraine does not provide the powers of the President of Ukraine to appoint the heads of functional subdivisions of the central administration and heads of regional departments.

Main Department for Combating Corruption and Organised Crime ("Unit "K")

First Deputy Chairman of the Security Service of Ukraine ex officio is Head of the Main Department for Combating Corruption and Organised Crime (MD CCOC of SSU, founded in January 1992).

The Head of MD CCOC of SSU is appointed and dismissed by a Decree of the President of Ukraine on the proposal of the Head of the Security Service of Ukraine.

The structure of MD CCOC of SSU:

- Central Department;
- Main departments (units) at the regional agencies of SSU.

MD CCOC of SSU takes decisions on the following issues:

- In cooperation with the prosecutor's office to take measures to ensure the investigation of criminal cases of crimes committed in organised forms, abuse of corrupt officials from the executive, legislative and judicial authorities, law-enforcement and controlling bodies;
- Termination and prevention of unlawful actions by the subjects of corrupt actions according to the Law of Ukraine "On prevention of corruption";
- Detection, prevention and termination of activity of the organised crime formations acting in the area of economics and financial system, fight against the corruption and legalization of illegally obtained costs;
- Prevention of damage to the state in credit and banking, financial and economic spheres;
- Organisation of detection, prevention, localization and termination of activity of inter-regional organised crime formations that use violent methods;
- Detection, prevention and termination of smuggling on the channel of foreign economic relations, operative development of inter-regional smuggling formations. Detection and cessation of illegal movement across the border of currency, historical and cultural values, toxic, potent, radioactive and explosive substances, weapons and ammunition;
- Prevention, detection and termination of criminal activity of the organised drug formations.

It is the activities of this unit of the secret service that have received the largest number of complaints in recent decades from human rights activists, international experts, as well as, which is the most important, the owners of business that conduct their own activity in Ukraine.

Extremely legally expanded functionality allows MD CCOC of SSU to be present in any area of life of the country and, thus, to have its own interests. Which, in addition, are not always ther same as the interests of the state.

In the beginning of its existence MD CCOC of SSU was positioned as a counterweight to MD of COC of MIA of Ukraine. By its original design that division of SSU had to become a restraining combat unit of the Presidential Vertical, which would not allow the Prime Minister, the area of responsibility of whom includes MIA, to get a sole influence on the whole criminogenic situation in the country.

That is why the mentioned SSU unit was endowed with almost similar functions to the Ministry of Internal Affairs in the field of combating corruption in the highest echelons of power., organised crime, crimes in the financing and banking sphere, activities of conversion centres, as well as countering smuggling.

However, with the passage of time, MD of CCOC of SSU and MD of COC of MIA equally shared their "spheres of influence" on all territory of Ukraine, and only sometimes the conflicts of their interests led to interdepartmental wars.

As a result of intermittent departmental, interdepartmental and political conflicts, the elite unit of SSU has turned into a powerful, manually directed instrument to settle both business and political accounts.

Each new President of Ukraine tried in the first place to receive the total control over the unit "K" by appointing loyal, but not very bright people on the positions. In time such practice led to constant rotation of personnel, when the new team fully "purged" the previous one, and it could happen twice a year. As a result of that, the level of qualification of the employees was in a steep dive. In addition, due to official and behind-the-state arrangements, the level of ability of the special unit of SSU to counteract the corruption and other crimes in the higher echelons of power constantly decreased.

According to the plan of Ukrainian lawmakers of the early 90s of the last century, MD of CCOC of SSU was supposed to counteract the corruption and organised crime in the highest corridors of power and on the sidelines, while not descending to the lower levels, where the relevant units of MIA work.

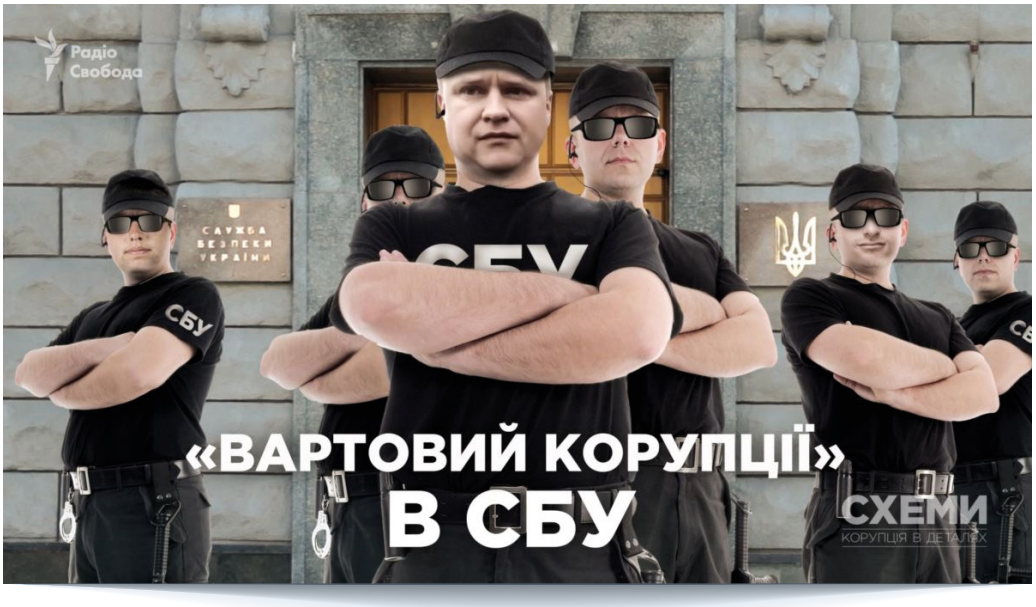
However, due to long-term politically biased manual control, that unit completely stopped counteracting the top corruption and organised crime. Currently the unit is basically able to counteract the corruption not higher than the level of management of departments of ministries and directorates, and in regions – the management of the structural subdivisions of the regional state administrations.

At the same time, individual heads of the units of MD of CCOC of SSU in every part of Ukraine focused their full attention on solving the issue of improving their material condition.

The legally defined powers of the special unit provide it the possibility for the wide-scale interference of various spheres of life of both the country, and the private sector:

- **Financial and banking sphere** – the activity of conversion centres that provide cash handling services, issuance of funds by the National Bank of Ukraine to commercial banks on refinancing terms;

- **Circulation of excisable goods** (tobacco, alcohol, fuels and lubricants), including their production;
- **The activity of the organised crime formations** (inter-ethnic or cross-border), including those involved in the organisation of transit channels for the supply of drugs and precursors;
- **The activity of customs bodies, brokers and all subjects involved in foreign economic activity.**



"Schemes" program – the joint project of Radio Svoboda and UA: FIRST.
The plot by Valeriya Yegoshina of 01.06.2018 "Guardian of the Corruption" in SSU"

Main Department for the Protection of the State's Interests in the Sphere of Economic Security

In January 1998 a Decree by the President of Ukraine created the **Department of Economic Security** (later renamed as the Department of Counterintelligence Protection of the Economics of the State – **DCPES**).

Since 2013 the Department received the name – **Main Department for the Protection of the State's Interests in the Sphere of Economic Security** (hereafter – **MD SES**).

MD SES is the second most influential and important division of the Security Service of Ukraine (after MD of CCOC). It protects the financial and economic and medical, fuel and energy, defence industrial, scientific, agronomic-industrial and transport complexes, as well as intellectual property and ecological security.

The units of **MD SES** were created (in the centre and the regions) with the aim of counteracting the activity of the special services of the foreign states in the field of the economics of Ukraine. However, in the last 15 years the activity of those units of SSU almost fully changed from counteracting foreign interference to the detection of economic crimes of a much lower degree.

The structure of MD of SES:

- Central department;
- Main divisions (units) at the regional bodies of Security Service of Ukraine.

Essentially, the units of MD of SES fully duplicate the similar units for the counteraction of economic crimes in the system of MIA of Ukraine, as well as MD of CCOC of SSU.

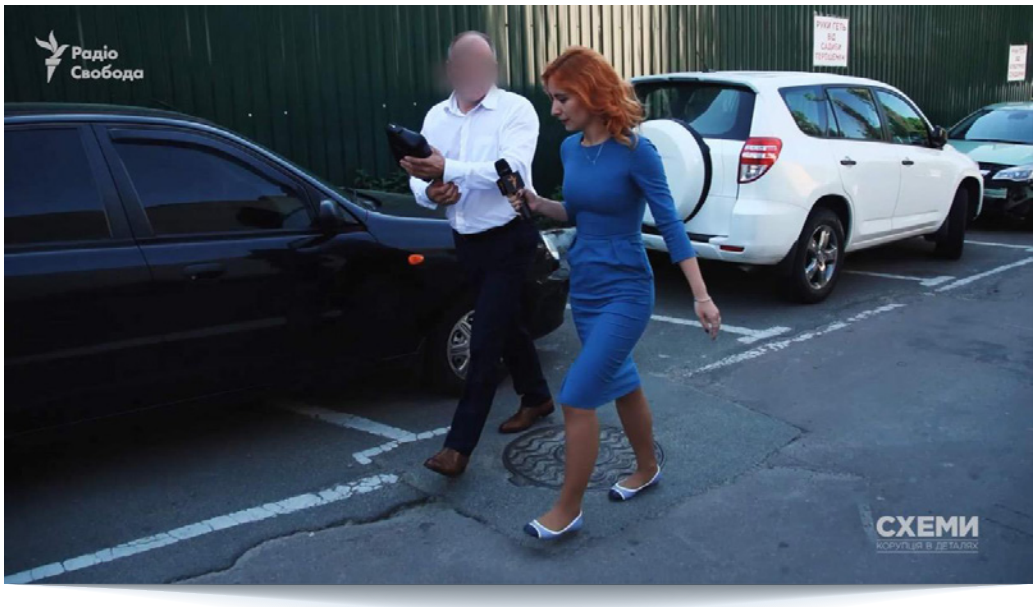
Nowadays the main and actual differences between the functions of those units are the following:

- MD of SES counteracts the crimes in the economic field committed by organised criminal formations. But in many cases this principle is not observed and any economic cases are taken into work. The investigative divisions of SSU reluctantly open the criminal proceedings in the economic crimes according to the materials of MD of SES, therefore the collected materials are mostly given to the investigators of the National Police or the State Fiscal Service, and MD of SES follows the investigation (carries out the instructions of the investigator in criminal proceedings).

- MD of SES detects the crimes in the field of economics of any level. **95%** of materials of the work of subdivisions that in most cases do not concern the issues of protection of national security, are directed to other corresponding law-enforcement agencies (National Police, State Fiscal Service of Ukraine). In their turn, the divisions of MD of SES are involved in following the investigation of such criminal proceedings. As part of such assignments, operational units conduct a full range of overt and covert investigative actions. (wiretapping of the phones, e-mail interception, covert intrusion into the dwelling, visual observation, etc.).

The units of the National Police that counteract the crimes in the economic field, unlike their colleagues from SSU, have the so-called full closed cycle. Meaning that the operational units of the National Police detect crimes, send their materials to the investigative units National Police and provide operational support to the trial.

For the last years the units of MD of SES saw no fewer accusations and complaints by the society and media than the MD of CCOC. First of all, the representatives of media and authors of the journalist investigations reported numerous facts of unlawful interference of SSU in the financial and economic activity of the enterprises, organisations and institutions regardless of the form of ownership (forcing managers to do or not to do certain actions).



An excerpt from the plot by the journalist of the "Schemes" Program – Valeria Yegoshina about the expensive car fleet of the Security Service of Ukraine

Another great complaint by the representatives of media is an unreasonably luxurious way of life of individual managers and employees of SSU, which does not correspond to their income and which cannot be explained by any logical means.

"Schemes" program – the joint project of Radio Svoboda and UA: FIRST.
The plot by Valeriya Yegoshina of 22.06.2017 "SSU Elite" the protectors of economics"

Main investigative department

Main Investigative Department is the **third** most influential, important and busy division in the system of the Security Service of Ukraine.

The tasks of the investigative bodies of SSU consist of **opening of criminal proceedings under the Articles of the CC of Ukraine in the jurisdiction of the security bodies, and conducting the pre-trial investigations within them:**

- crimes against the foundations of the **national security**;
- **smuggling** (of cultural values, toxic, potent, explosive substances, radioactive materials, drugs, their analogues and precursors, weapons and ammunition, as well as special technical means of covert reception of information);
- crimes against the **public safety** (terrorism, attacks on especially dangerous objects, unlawful production of nuclear explosive devices);
- crimes in the field of **protection of state secret, inviolability of state borders**;
- crimes against **peace, safety of humanity** and **international legal order**.

The structure of the investigative bodies of the Security Service of Ukraine includes the Main Investigative Department (MID) and its subordinate investigative units (departments) of the regional bodies of the special service.

Article 216 of the Code of Criminal Procedure of Ukraine defines the jurisdiction of the investigative bodies of the Security Service of Ukraine for several Articles of the CC of Ukraine: (109, 110, 111, 112, 113, 114, 201, 258, 258-1, 258-2, 258-3, 258-4, 258-5, 261, 261, 265-1, 305, 328, 329, 330, 332, 333, 334, 359, 422, 436, 437, 438, 439, 440, 441, 442, 443, 444, 446, 447).

If during the investigation of crimes provided by Articles 328, 329, 422 of the CC of Ukraine, there will be established the corpus delicti provided by Articles 364, 365, 366, 367, 423, 424, 425, 426 of the CC, they are also investigated by the SSU investigators.

At the same time, the prosecutor has the right in individual cases to entrust to the investigative bodies of SSU the pre-trial investigation for other Articles of the CC of Ukraine.

The staff for the investigative bodies and divisions of SSU is prepared by the Institute of Legal Personnel Training for the Security Service of Ukraine of the National Law Academy. Of Yaroslav the Wise (Kharkiv). The military servicemen who have served in the SSU investigative bodies are awarded military ranks of justice.

The SSU bodies and subdivisions are entrusted with the function of searching for persons who are hiding in connection with the commission of these crimes.

Analysis of the effectiveness of the investigative units of the Security Service of Ukraine in 2018-2020

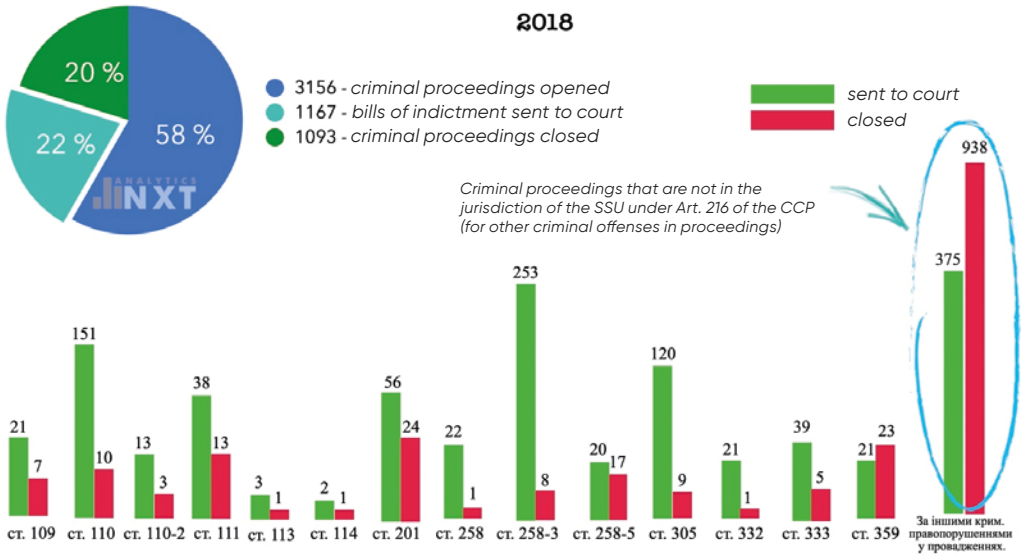
Approximate average number of staff of SSU investigative units in the regions is **15-20 persons** in each region. Thus, approximate number of the investigators of SSU (centralized body and regions) is around **500 persons**.

It was established in a practical way, that for a proper and full process of investigation, in the work of 1 investigator, the number of criminal proceedings at a time should not exceed **20 cases**.

2018

The average load of the investigators of SSU was: 3156/500 = 6,3 proceedings for one investigator a year. In addition to the criminal proceedings under the main articles, the investigators of SSU for that period directed to court **375** and closed **938 criminal proceedings** under other Articles of the CC of Ukraine that are not in the jurisdiction of the security services.

32% of criminal proceedings sent to court are not in the jurisdiction of the security services; **86%** of the closed criminal proceedings are not in the jurisdiction of the security services.

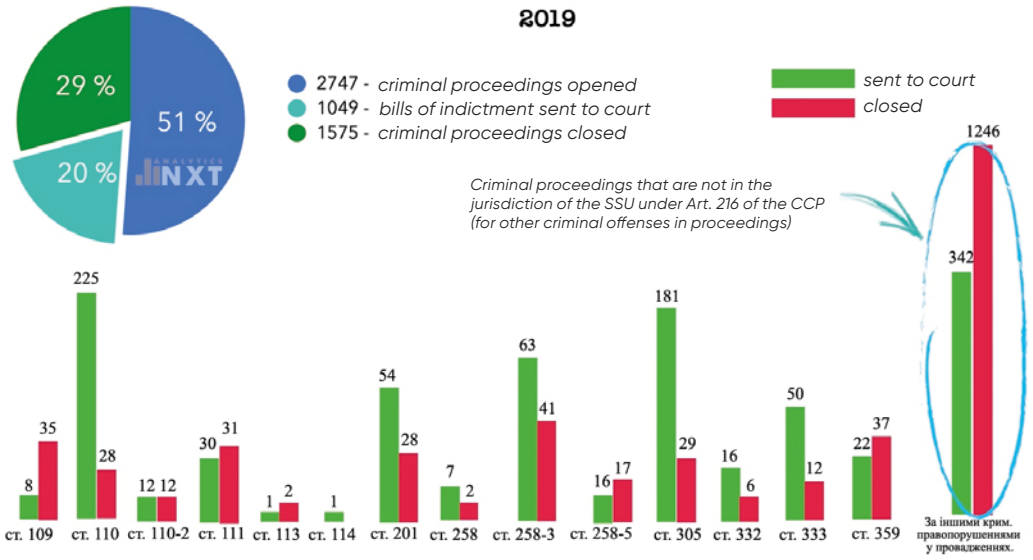


*official data on the number of criminal proceedings were received at written request from the Main Investigative Department

2019

The average load of the investigators of SSU was: 2747/500 = 5,4 proceedings for one investigator for a year. In addition to the criminal proceedings under the main articles, the investigators of SSU for that period directed to court **342** and closed **1246 criminal proceedings** under other Articles of the CC of Ukraine that are not in the jurisdiction of the security services.

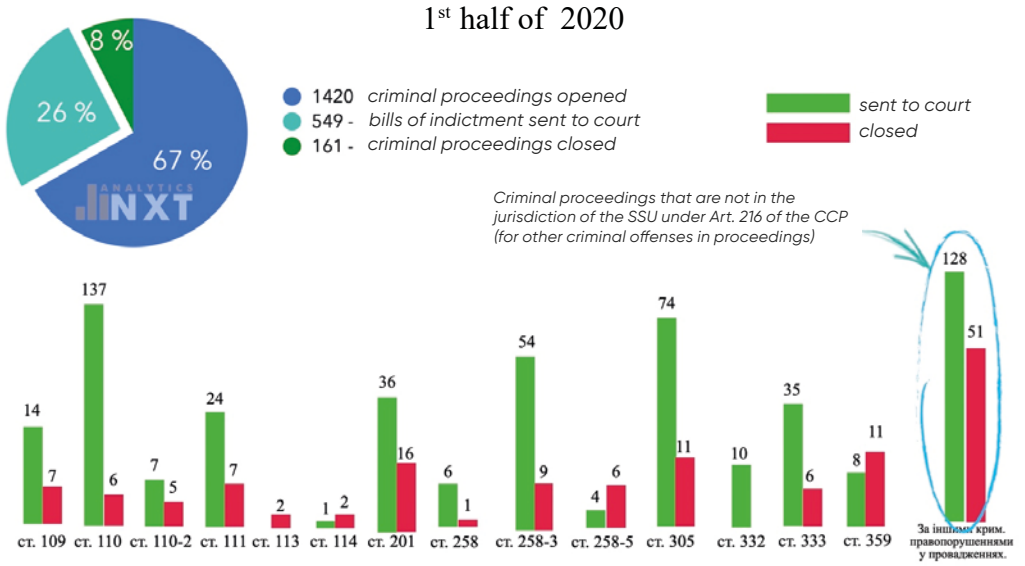
33% of criminal proceedings sent to court are not in the jurisdiction of the security services; **79%** of the closed criminal proceedings are not in the jurisdiction of the security services.



1st half of 2020

The average load of the investigators of SSU was: 1420/500 = 2,8 proceedings for one investigator in a year. In addition to the criminal proceedings under the main articles, the investigators of SSU for that period directed to court **121** and closed **51 criminal proceedings** under other Articles of the CC of Ukraine that are not in the jurisdiction of the security services.

23% of criminal proceedings sent to court are not in the jurisdiction of the security services; **32%** of the closed criminal proceedings are not in the jurisdiction of the security services.



Conclusions

The average load of the investigators of SSU is around **5 criminal proceedings for 1 investigator for a year**. For the comparison (and this is not an example to be followed) in a district police department an average load of the investigators is around **220 criminal proceedings for one investigator for a year.**

Each year around **30%** criminal proceedings sent to court by SSU are the ones that are not in the jurisdiction of the special service. Thus, around a third of activity of SSU is not in its direct competence.

Each year around **80%** of criminal proceedings closed by SSU are the ones that are not in the jurisdiction of the special service. It should be noted that within those criminal proceedings a full set of investigative actions is being actively carried out (searches, detentions etc.), as well as covert actions (wiretapping of cell phones, visual surveillance, covert entering to the premises etc.).

Each year SSU pays a significant attention to the investigation of criminal proceedings that are formally in the jurisdiction of SSU, but in fact are in the competence of the bodies of the National Police (in particular, Art. 305 of the CC of Ukraine "Smuggling of drugs, psychotropic substances, their analogues or precursors or falsified medicines").

Thus, it is possible to draw a well-founded conclusion about the extremely inefficient use of the SSU investigative apparatus.

Counterintelligence Department

On 27 December 1991 the Main Department of Counterintelligence of the Security Service of Ukraine was created.

On 28 January 1998, the Counterintelligence Department was organised on the basis of the Main Department.

The functions of the Department:

- Counteraction of intelligence, terrorist and other activities of the special services of foreign countries, as well as organisations, individual groups and persons aimed at harming the state security of Ukraine;
- Obtaining, analytical processing and use of information that contains indicators or facts of intelligence, terrorist and other activities of the special services of foreign countries, as well as organisations, individual groups and persons aimed at harming the state security of Ukraine;
- Development and realization of measures concerning the prevention, liquidation and neutralization of threats to the interests of the state, society and rights of the citizens.

The structure of the Department:

- management;
- departments (main departments);
- Main divisions at the regional departments of SSU (in MD of SSU in Kyiv and Kyiv region) – departments;
- Sectors at inter-district units.

In 1998, the Main Directorate of Military Counterintelligence was established within the Counterintelligence Department.

Nowadays the Main Directorate of Military Counterintelligence is transformed into an independent Department of Military Counterintelligence.

The main purpose of the Department is to detect, prevent and terminate the intelligence and other activities carried out by the special services of the foreign countries in the Armed Forces of Ukraine, State Border Service and other military formations on the territory of Ukraine.

The Department of Counter-Intelligence Protection of the Interests of the State in the Area of Information Security

The Department was created by the Decree of the President of Ukraine on 25 January 2012.

The unit works in the field of information security, provides the state security in the cybernetic and information spheres, coordinates and controls the activity of the regional bodies and units of the Central Department of SSU.

Situational centre for cybersecurity

On 25 January 2018 SSU opened the Situational centre for cybersecurity (the Centre), created on the basis of the Department of Counterintelligence Protection of interests of the state in the field of information security of SSU.

The Centre was established within the framework of the Agreement on the Implementation of the Trust Fund of Ukraine – NATO on the issues of cybersecurity. Special hardware and software were obtained for this purpose. The key capabilities of the Centre should be a system for detecting and responding to cyber-incidents, as well as a computer science laboratory. They will prevent cyberattacks, establish their origin, analyse them to improve countermeasures.

The tasks of the Centre:

- combating crimes against the peace and security of mankind committed in cyberspace;
- conducting counterintelligence and operational-search activities in the fight against cyberterrorism and cyber-espionage;
- secret verification of the readiness of critical infrastructure facilities for possible cyberattacks and cyber-incidents;
- countering cybercrime, the consequences of which may threaten the vital interests of the state;
- investigation of cyber-incidents and cyberattacks on state electronic information resources, critical information infrastructure;
- ensuring response to cyber-incidents in the field of state security.

Centre of special operations "A"

On 23 June 1994 by Presidential Decree, **Department "A"** was established within the Central Department of the Security Service of Ukraine, as well as relevant units in the regions.

In July 1996 the unit was reorganised as the **Department of Combating Terrorism, Protection of Participants in Criminal Proceedings and Law-enforcement Officers of the Security Service of Ukraine.**

Since December 2005 the unit has the name **Centre for Special Operations in Combating Terrorism, Protection of Participants in Criminal Proceedings and Law Enforcement Officials** (Centre).

The main functions of the Centre:

- termination of terrorist acts;
- counteracting the illegal armed formations, terrorist organisations, intelligence and subversive groups of foreign states;
- ensuring that SSU officers carry out operational and investigative, counterintelligence measures, and procedural actions;
- participation in the protection of public authorities and officials, as well as ensuring the security of SSU employees, bodies of the SSA system and their close relatives;
- contribution within the competence of the SSU in ensuring the regime of martial law and state of emergency in the event of their declaration.

Anti-terrorist centre at SSU

Anti-terrorist centre (the Centre) was created in December 1998 by a Decree of the President of Ukraine. It is a constantly functioning body at SSU, which coordinates the activities of the subjects of the fight against terrorism. The legal basis foe the activity of the Centre is the Constitution of Ukraine, the Law of Ukraine "On combating the terrorism", the Provision on the anti-terrorist centre and its coordination groups at the regional bodies of the Security Service of Ukraine and other legal acts.

Since 2016, according to the Ruling of the Cabinet of Ministers of Ukraine of 18 February 2016 No. 92 Ukraine has a Unified State System for the Prevention, Response and Cessation of Terrorist Acts and Minimization of Their Consequences.

Periodically, with the aim of checking and maintaining the necessary level of preparation of forces and means of the subjects of the fight against terrorism to reacting to the threats of the terrorist acts, the Centre, with other law-enforcement and state authorities, arranges and performs the command and staff, as well as special tactical exercises and training.

The system defines the markers of the terrorist threats: "GRAY", "BLUE", "YELLOW" and "RED". **As of 28 May 2020 there are such levels of the terrorist threats in Ukraine:**

- **"RED" (real threat)** – Donetsk and Luhansk regions, AR Crimea.
- **"YELLOW" (possible threat)** – Zaporizhzhia, Mykolaiv, Odesa, Sumy, Kharkiv, Kherson and Chernihiv regions.
- **"BLUE" (potential threat)** – Kyiv city, Kyiv, Dnipropetrovsk, Transcarpathian, Rivne, Khmelnitsky, Cherkasy and Chernivtsi regions.
- **"GRAY" (probable threat)** – Vinnytsya, Volyn, Zhytomyr, Ivano-Frankivsk, Kirovograd, Lviv, Poltava and Ternopil regions.

Department of Protection of National Statehood (Department "T")

The Department was created in 1992 on the basis of the fifth Department of KGB of USSR – the structural subdivision present in all republican structures of KGB of USSR, which was responsible for the counterintelligence activity in combating the ideological sabotage of the enemy.

The structure of the Department of PNS:

- Central Department;
- Main departments at the regional bodies of SSU;
- Sectors at inter-district departments.

Functions of the Department:

- Protection of the national statehood;
- Countering the change of the constitutional order by force, violation of sovereignty and territorial integrity of the state, undermining of its security, illegal seizure of state power;
- Counteracting the propaganda of war, violence, incitement of inter-ethnic, racial, religious and other enmity;
- Counteracting the encroachments on human rights and freedoms, as well as prevention, detection and termination of crimes and other unlawful actions that directly create the threat to crucial interests of the state and security of the citizens of Ukraine.

Internal Security Department

It is this unit that is responsible for counteracting the infiltration of foreign intelligence agents into the SSU, detecting and counteracting the crimes committed by its employees, as well as protection of its own employees and their relatives from unlawful encroachments, in the process of their performing of their functional duties.

"Schemes" program – the joint project of Radio Svoboda and UA: FIRST
The plot by Valeriya Yegoshina of 29.10.2020. "Secret staff of SSU: Andriy Naumov's Alter Ego"

The Department of Information and Analytical Support

The SSU carries out information and analytical activities with the aim of assisting to the leadership of the state in implementing the foreign and internal political course concerning the development of the state, strengthening its defence capabilities and economic potential, expansion of international cooperation.

Department of Protection of State Secrets and Licensing

Under the Law of Ukraine "On state secret" and other legal acts the SSU participates in the development and implementation of measures concerning the provision of protection of state secret and confidential information that is owned by the state.

Educational institutions

National Academy of the Security Service of Ukraine

National Academy of the Security Service of Ukraine is the only higher education institution in Ukraine that prepares the experts of SSU in the counterintelligence area.

The education program includes the legal, special, philological (11 foreign languages) education, as well as the study of such disciplines as "national security", "cybersecurity", "law" etc.

The following function in the Academy:

- Educational and Scientific Institute of Counterintelligence;
- Educational and Scientific Institute for Retraining and Advanced Training of SSU Personnel;
- Educational and Scientific Institute of Information Security;
- Educational and scientific centre of language training.

Institute of Legal Personnel Training

The institute of Legal personnel Training for the SSU is founded in 1994 for the training of employees and investigators of Ukrainian special service and other law-enforcement bodies, and is a division of the Yaroslav the Wise National University of Law.

Disciplines and special courses:

- pre-trial investigation in the bodies of SSU;
- legal support of operational and service activities;
- basics of the state security, counterintelligence and operational and search activities;
- tactical-special and operational-tactical training.

The State Archive of SSU

The Archive was created in 1994 and is one of the most accessible among the archives of the former KGB in post-Soviet countries.

The materials kept here cover the period between 1918 and the collapse of USSR. It is almost 224 thousand volumes in Kyiv solely. Also, over 735 thousand volumes in regional subdivisions.

A significant part of the Archive consists of criminal cases on Ukrainian activists repressed in 1920-1980. Some of the documents and photographs were digitized and are in free access.

Ukrainian Research Institute of Special Equipment and Forensic Science

The Institute develops and produces the new samples of the specialist devices.

In particular:

- special machinery and equipment for anti-terrorist units;
- engineering equipment for mine clearance;
- information interception complexes;
- the latest forensic tools, technologies and techniques.

Developments of the Institute are used in operational and search, counterintelligence and anti-terrorist activity. At the same time, the Institute provides technical and forensic support for investigative and search actions.

The Centre for Forensic and Special Expertise performs **23 types of examinations** in **43 specialties**, including:

- technical examination of the documents;
- handwriting examination;
- ballistic, trasological, explosive;
- examination of audio and video recordings;
- computer and technical examination;
- telecommunication;
- examination of drugs and psychotropic substances;
- biological examination.

Military Medical Department

The department organises the health care in the SSU system and is an organisational and methodical centre that controls the work of all military and medical units of SSU.

At the same time, it is a treatment and prophylactic facility that provides outpatient and inpatient care, organises the prophylactic and provides care and rehabilitation of the patients with wide range of conditions.

Conclusions

At first glance, it can be concluded that the most problematic units of the Ukrainian secret service are the Main Directorate for Combating Corruption and Organised Crime., Main Department for the Protection of the State's Interests in the Sphere of Economic Security, as well as the Main Investigative Department. However, this is only at first glance and not very attentive one. Those divisions, with their active and not always perfect (from the point of view of ethics or the Criminal Code) activity draw the public attention, and they have become the subjects of numerous plots and articles. An incredibly high and sometimes groundless level of secrecy, imitation of a Soviet principle "Honor of the uniform", allows to leave without publicity a large number of dark pages in the activities of the SSU, its regular and high-ranking officials, including the Generals.

In the perspective, the activity of all SSU bodies without exception, and their heads, must become a subject of detailed attention by the new management of the special service. And the attention should be focused not on the "witch hunt" or power-related tug-of-war, but on performing the clear and pragmatic tasks that will correspond to the strategy of the national security of Ukraine.

> **Main maxima:** *each state authority must perform only its circle of clearly defined tasks and duties, without their overlapping with other state authorities. The heads of those state authorities must bear personal responsibility for the results and efficiency of work, and not delegate the responsibility to other bodies.*

The suggested structure of the new SSU and details for the subdivisions

Key innovative decisions in the work of Security Service of Ukraine

01 **Change of focus of the work of the special service:** from the criminal prosecution to deep counterintelligence activity and the prevention of unlawful actions. Furthermore, the priorities of work of the special service will include the analytical provision of activity of the higher officials of the state. Such activity will be performed in such ratio: **70%** – the provision of information tasks by the management "from the top down", and **30%** – initiative informing from the bodies and subdivisions of SSU.

The gradual transference of investigative functions and bodies of SSU to SBI. Subsequently SBI and SSU will cooperate as a hybrid.

Central management of the special service (except for internal security unit and regional departments) does not carry out the operational and search or counterintelligence activities.

02 **Gradual reduction of the staff of SSU** at the expense of the employees of assisting subdivisions, the liquidation of social infrastructure (departmental kindergartens, sanatoriums, medical institutions etc), transfer of part of economic functions to the outsource (food, vehicle maintenance etc). Liquidation / merger of part of district, inter-district and city subdivisions of SSU. Implementation of those measures will result in significant optimization of the budget expenditures It is advisable to preserve the medical infrastructure and transfer it to the Ministry of Defence.

03 **Change of the organisation of the management:** the activities of the SSU are managed by the Head appointed and dismissed from the position by Verkhovna Rada of Ukraine after the proposition by the President of Ukraine, he or she is chosen from among the civilian persons for 7 years. The same person cannot hold this position for two terms in a row. Before that, a candidate for the position of the Head of SSU is interviewed in the profile Committee of the Verkhovna Rada of Ukraine, which includes the control over the activities of intelligence agencies and special services.

After the results of the examination, the Committee provides the President of Ukraine with its opinions and propositions concerning the candidate for the position of the Head, which are currently recommendations by their nature.

04 **The Head of SSU independently** (without the presidential decree) **appoints** the state secretary (through a competition), first deputy, the heads of functional units of the Central Department (CD) and the heads of the regional bodies (corresponding to the number of regions).

05 **The reduction of number of Deputy Heads of SSU from five positions to two.** The introduction of the position of the state secretary (the Head of SSU carries out the formation of the strategy of development of the special service and the state policy, and the state secretary provides its implementation, controls the implementation of the instructions and orders of the Head, as well as governs the apparatus).

The candidates for the position of the state secretary, first deputy of the Head of SSU, the deputy Head, the heads of the functional units of the CD, as well as the heads of the regional bodies, are interviewed in the profile Committee of the Verkhovna Rada of Ukraine, which includes the control over the activities of intelligence agencies and special services.

On the results of the examination the Committee provides the Head of SSU with its conclusions and suggestions concerning the candidates, which are recommendations by nature.

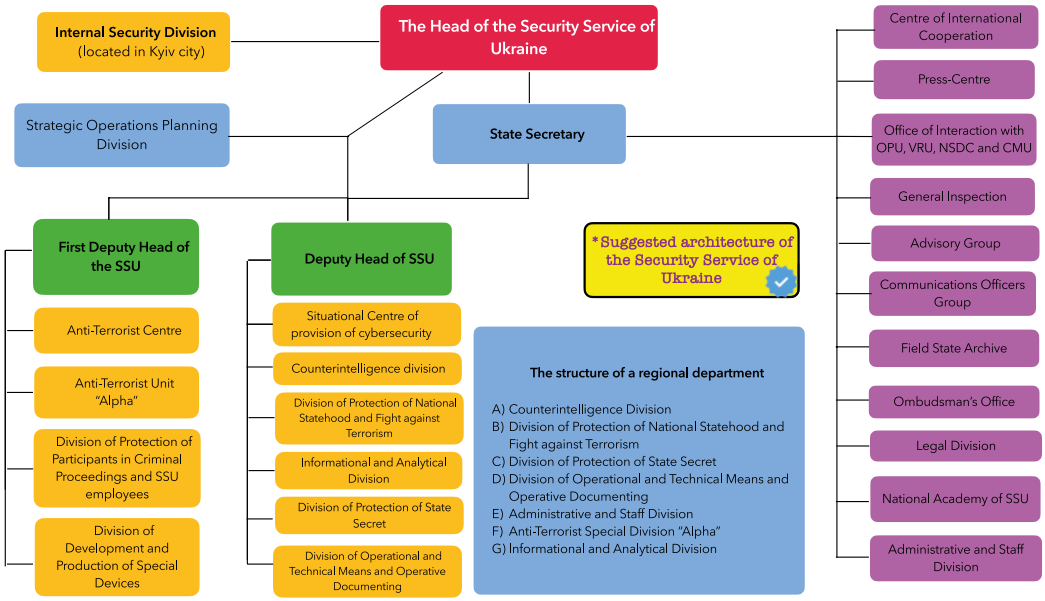
The suggested total number of SSU employees is 13.000 persons.

06 **Introduction of electronic document management system**, in which at the first stage the documents without a stamp of restriction will circulate. Such decision will significantly optimize and accelerate the internal document circulation, and will significantly reduce the annual budget expenditures for the maintenance of secretariat staff and the purchase of consumables.

07 **Introduction of internal online system of monitoring of foreigners and stateless persons visiting** the objects of crucial infrastructure of Ukraine, in the SSU system, as well as foreign delegations that visit the state institutions of Ukraine (in accordance with the Procedure for organising and ensuring secrecy in state bodies, local governments, enterprises, institutions and organisations, approved by the resolution of the Cabinet of Ministers of Ukraine of 18.12.2013, No.939).

08 **Introduction of constant online access of the SSU employees to the databases of monitoring** of civil and military aircraft with foreign registration, that takes off/lands in Ukrainian airports, as well as sea and river vessels with foreign registration, which enter or leave Ukrainian ports.

09 **Introduction of constant online access of SSU employees to all state registers** necessary for the performance of their duties. In addition, the access is provided to the databases of the State Border Service of Ukraine concerning the foreigners and stateless persons who arrive to Ukraine or leave it, or are in transit with the use of air-, sea-, river-, railroad or motor transport and at pedestrian crossings of the state border.



The division of the spheres of activity

The Head of Security Service of Ukraine

The Head represents SSU in the relations with other authorities, during the international contacts. Carries out the political management and defines the strategic directions of the work of the special service.

Personally coordinates and organises the work of the following divisions:

I Internal Security Division (located in Kyiv)

- Carries out the operational and search and counterintelligence measures with the aim of prevention, detection, termination of commission of crimes by SSU employees.
- Conducts official investigations concerning SSU employees.
- Checks the information that is contained in the applications of individuals and legal entities, media and other sources, including the information received through the special phone line, internet page, electronic communication means of SSU, concerning the involvement of the SSU employees in commission of crimes.
- Controls the observance of requirements of anti-corruption legislation by SSU employees.

II Strategic Operations Planning Division

Plans the particularly difficult and important operations, operational and technical measures, operational implementations, combinations, etc. It is staffed with the most experienced and trained employees, and reports personally to the Head of the SSU.

State Secretary of SSU

The Head of SSU forms the strategy of short-term, medium-term and long-term development of the special service and the state policy, and the state secretary (as well as the state secretary of the Ministry) ensures its daily implementation. The main tasks of the State Secretary of SSU are ensuring the activity of SSU, stability and continuity in its work, organisation of current work related to performance of tasks of SSU The State Secretary regulates the SSU apparatus, coordinates the interaction of the first deputy, deputy, the heads of functional units of the central apparatus, as well as heads of regional bodies.

The sphere of activity of the State Secretary does not include solving the issues concerning the internal security, execution of instructions of investigators on specific criminal proceedings, works in counterintelligence or operational and search tasks, the planning of the operations for the liberation of hostages, performance of other counterintelligence or operational and search measures.

First Deputy Head of SSU

In absence of the Head of SSU he temporarily performs the Head's duties. He directly coordinates the works of the following divisions:

I **Anti-Terrorist Centre.**

II **Anti-terrorist unit "Alpha".**

III **Department for the Protection of Participants of Criminal Proceedings and SSU Employees.**

Deputy Head of SSU

Directly coordinates the work of the following key divisions:

I **Counterintelligence division.** Functions:

- Counteracting the intelligence and subversive activities of the special services of foreign states, organisations and individuals aimed at harming the national interests of Ukraine, including on the international arena.
- Counterintelligence protection of the economic well-being of Ukraine from the influence of the special services of foreign states, foreign governmental or private enterprises, organisations and institutions (work exclusively from the standpoint of foreign presence).
- Counteracting the activity of special services of foreign states, organisations and individuals in cybernetic space, fight against the cyberterrorism and cyberspying, interference in the work of state authorities, enterprises and institutions (the share of the state no less than 30%), military and strategic objects.

II **Divisions for protection of national statehood.** Functions:

Counteracting the intelligence, terrorist, extremist (needs a legal definition) and other activities of the special services of foreign countries, crimes against peace and safety of humanity, distribution of weapons of mass destruction.

III **Information and analytical department.**

IV **Subdivision of operational and technical measures and visual surveillance.**

V **The Centre of cybersecurity.**

VI **Subdivision of protection of state secret.**

The central department (except for the internal security unit and regional departments) does not conduct operational and search or counterintelligence activity. The units of the CD are formed by experienced and professional employees. The tasks of CU concern the coordination of activity of the regional subdivisions, provision of practical and methodological assistance.

The pre-trial investigation of crimes against the national security of Ukraine, the detection and prevention of which is in the competence of the SSU, is carried out by SBI. The operational units of SSU within the framework of the criminal proceedings concerning the investigation of crimes against the national security of Ukraine carry out the instructions given only by SBI investigators.

The Head of the SSU, the State Secretary, the First Deputy Head, the Deputy Head and the heads of regional bodies are subject to the obligation to submit annual declarations of property and income.

Functions of the new Security Service of Ukraine:

01 **Counteraction and prevention** (detection, localization, liquidation of the causes and conditions that can cause or contribute to such activity) **of intelligence and subversive activities** of the special services of foreign states, organisations, institutions and individuals aimed at harming the national interests of Ukraine.

02 Counteraction and prevention of terrorism, including foreign one.

03 **Counteraction and prevention of extremist** (requires the legal definition) **and other activities** of the special services of the foreign states, organisations, institutions and individuals in committing crimes against peace and safety of humanity.

04 **Counteraction and prevention of distribution of weapons of mass destruction**, as well as chemical, germ, viral and other substances created within military and civil programs, which can be used to harm the interests of Ukraine, life or health of citizens or environment.

05 **Counterintelligence protection of economic well-being of Ukraine** from the direct and indirect influence of the special services of foreign countries, foreign governmental or private enterprises, organisations and institutions, and individuals (work exclusively from the standpoint of foreign presence).

06 **Counteraction of activity of the special services** of foreign countries, organisations and individuals in cybernetic space, fight against the cyberterrorism and cyberintelligence, interference in the work of state authorities, enterprises and institutions (the share of the state no less than **30%**), military and strategic objects.

07 **Protection of state secret.**

Conclusions

The Ukrainian society must see the updated national special service, the attention of which will be focused on the ling-term counteraction of activities of special services of foreign states. A significant increase in number of successfully conducted daring operational combinations, disinformation operations, introduction of the agents to foreign special services and other informational operations, beyond any doubt, would lead to an improvement of condition of protection of both the country in general and each citizen separately.

The special service should fully get rid of "short" police results, such as the detention at the airport of a party of 20 smuggled modern smartphones.

To ensure the performance of their functions, SSU officers will be provided with adequate financial support and decent social guarantees.

Introduction of the electronic document management system in the SSU (at the first stage for documents without restriction stamp), as well as the provision of the employees with access to main state electronic arrays of information, in the short term will ensure significant progress in ensuring national security. In addition, due to deprivation of special service of the function of intervention in economic processes (except the facts of activity of foreign special services and their agents), will contribute to the development of the economics of the state and will greatly improve the society's trust for the special service, the main purpose of the functioning of which is the provision of safety of the society.

Foreign experience of introduction of parliamentary control

The purpose of parliamentary control over the activity of the special services and intelligence bodies is aimed at provision of their observance of rights and liberties of the citizens during the performance of their special powers.

In most countries of the world there are two main types of parliamentary control over the main aspects of activity of the special services and intelligence bodies:

- General parliamentary committees.
- Specialized parliamentary committees.
- General parliamentary committees.

In most countries the competence of a number of parliamentary committees **with general sphere of powers includes** the control over some aspects of activity of the special services and intelligence bodies. In particular, such committees are responsible for the internal affairs, security, justice and defence, and in addition to their main specifics they can also control the activity of the special services and intelligence bodies.

Similarly, committees on various issues, such as human rights, may also oversee some aspects of intelligence operations. In many cases, such committees have concomitant jurisdictions.

The shortcomings of the general parliamentary committees:

Such committees provide only superficial control over the special services and intelligence bodies, as they tend to address many other issues and often do not have the time, resources, access to classified information and / or knowledge to focus on these services and bodies.

Specialized parliamentary committees

Due to the shortcomings of the general committees, many states have decided to set up specialized committees in parliament to oversee the activities of special services and intelligence bodies. Such committees are usually full-fledged committees of parliament.

Specialized committees usually exercise parliamentary control over one or more intelligence services as a whole. Also, specialized committees may be entrusted with the control of certain aspects of the activities of special services, such as finance.

Such committees are usually created on the basis of a statute (Spain, Italy), or based on the parliament's own rules (the Netherlands). In some cases the powers of the specialized committees were directly defined in the Constitution (Germany).

In many democratic states there is one specialized parliamentary controlling body (committee), responsible for diligent control over all special services, intelligence bodies or particular functions regardless of which state bodies perform them.

In bicameral parliaments, *such committees are joint*, they unite the members of both Chambers, for example, the Italian parliaments oversight committee (COPASIR) and Australian parliaments Permanent Joint Committee on Intelligence and Security.

In some countries the committees that control several special services or intelligence bodies, are located in one building of bicameral parliament, for example, German Bundestags Parliamentary Control Panel and Deutch Tweede Kamers Committee on Intelligence and Security Services.

Another kind of such approach is the creation of one specialized control committee in both Chambers of a bicameral parliament, each of which is responsible for controlling a wide range of special services and their functions. The best example is the Congress of USA, which has the Senate Select Committee on Intelligence and the House of Representatives Permanent Select Committee on Intelligence.

Finally, some states decided to create several parliamentary committees, each of which is solely responsible for monitoring the activities of a particular intelligence service (Czech Republic, Slovakia, Romania).

Conclusions

It is difficult to assess and compare the results of activities of each of two models of parliamentary control (general committees and specialized committees) because of full secrecy of their work.

However, it is often believed an appropriate practice to create one (specialized) committee that would be responsible for the control over all special services, intelligence bodies and their functions, as this contributes to uninterrupted scrutiny and avoids the problem of certain issues falling within the remit of two or more parliamentary committees.

In cases where several committees are involved in control, the oversight may become fragmented.

On the other hand, the presence of several committees, each of which is focused on one particular special service and/or intelligence body, allows the controllers to focus their time and resources on the smaller circle of questions, as well as to be specialized on the work of a particular body.

Advantages of parliamentary control over special services and intelligence agencies

01 It can be seen as the one that provides the **most democratic approach to the control**, since the control is carried out directly by the elected representatives of the population.

02 **The control with the participation of various political parties** can guarantee that the special services and/or intelligence bodies serve the interests of the society in general, and not the current government or the President.

03 **The Parliament is able to ensure the effectiveness of control processes**, meaning the special services and/or intelligence bodies taking into account the conclusions and recommendations of the relevant control committees. Parliament has a number of instruments in this regard, including budgetary powers and powers of dismissal, as well as the possibility to introduce changes to the legislation that regulates the activities of such bodies.

Shortcomings of parliamentary control over the special services and intelligence bodies

01 **Parliament, by definition, is a form for realizing the political interests of parties.**

In most parliaments the deputies seek to develop the interests of their political party/group contrary to the interests of other parties. Such aims are often not fully compatible with the requirements of effective independent control. For example, the deputies who are members of the ruling party may not be inclined to cover issues or events that may harm the government or the President.

In contrast, deputies from opposition parties sometimes seek to use their position on the control committee for their own political gain.

Furthermore, the instability of the parliamentary politics is another shortcoming of the parliamentary control. In particular, in cases when newly started «maverick» populist parties start working, the risks related to the information leaks for political or other benefit, can be much higher.

02 **Deputies often do not have experience necessary for understanding the work of the special services** and intelligence bodies, as well as time for the relevant training, and it can be used by the officials of the bodies, which are within the purview of such a committee, in order to hide certain problems or mislead the MPs.

To solve this problem, it is possible to ensure that the committee is staffed by parliamentarians who have relevant professional experience. Expert support for the work of the committee by professional staff and staff / freelance advisers is also important.

Employees of the staff of the profile parliamentary committee that have experience in the secret services greatly facilitate the current work of that parliamentary body and the professional level of the documents prepared by it.

An example of the implementation of the concept of parliamentary control over the activities of special services and intelligence bodies

USA

In 1976 there was created the **Special Intelligence Committee** (hereafter – SIC) **of the Senate** and S**tanding Special Committee on Intelligence** (hereafter – SSCI) o**f the House of Representatives**. In case of necessity of consideration of extraordinary questions the possibility of creation of special commissions was provided.

The leading directions of work of both committees concerning implementation of control functions are:

- consideration of the draft budget of the intelligence community and control over the spending of funds during the financial year;
- development of legislation in the field of intelligence activities;
- control over secret operations;
- approval (in SIC) the presidential nominees for director and first deputy director of the CIA, as well as the heads of the military intelligence, whose positions correspond to the rank of three-star general;
- preparation of reports for the relevant chambers of Congress on specific issues in which intelligence played a significant role.

Great Britain

In 1994 a Law "On intelligence service" was adopted, and the **Intelligence and Security Committee** (hereafter ISC) was created in the Parliament. The powers of the Committee included the issues of control over the observance of legislation in the activity of the special services, expenditures of budget funds and management of special services by the government. In 2013 the powers of ISC were expanded by empowering it to control the operational activity of the special services (except for current operational measures).

The objects of control of **ISC** became such governmental structures (Joint Intelligence Committee and National Security Secretariat), military intelligence of the Ministry of Defence and the Department of Homeland Security and Counterterrorism of the Ministry of Internal Affairs (hereafter MIA)

The **ISC** include 9 members from the House of Commons and the House of Lords, each of them cannot hold a position in government. The members of **ISC** are appointed by the joint decision of both Houses of Parliament, after the proposition of the Prime Minister, agreed with the opposition leader. For the performance of their functions the members of **ISC** are provided with access to the information that constitutes the state secret.

The **ISC** can also prepare special secret reports on activities of the special services for the government, on its own initiative or at the request of members of the Cabinet of Ministers. Some of those special reports are later (after the relevant censoring) published on the web site of **ISC**.

The meetings of **ISC** are held behind closed doors, but the legislation obliges the **ISC** to provide the annual open report on its activity. The draft report is agreed in advance with the Prime Minister to prevent the leakage of nationally sensitive information. Usually, after the publication of an open report, the government prepares its response to the report (with assessments of some provisions), which is submitted by the Prime Minister to the parliament.

The concept of parliamentary control in Ukraine

General review

For full and balanced parliamentary control over the activity of intelligence bodies, special services and law-enforcement agencies of the state it is suggested to introduce in Ukraine a system consisting of **two separate specialized Committees**.

I Committee of the Verkhovna Rada of Ukraine on Ensuring Parliamentary Oversight and Control over **Special Services and Intelligence Bodies**.

II Committee of the Verkhovna Rada of Ukraine on Ensuring Parliamentary Oversight and Control over **Law Enforcement Bodies**.

Such decision would allow to provide the parliamentary control over the special services, intelligence and law-enforcement bodies and coordination bodies, as well as unload the number of existing Committees of Verkhovna Rada of Ukraine that constantly affects their efficiency.

At the same time, Parliamentary control must cover most of the aspects of activity of special services and intelligence bodies. Instead, interference in the process of performing their functional duties is impractical and often harmful from the point of view of national security.

It is expedient to include the following bodies in the sphere of competence of the Committee of the Verkhovna Rada of Ukraine for Ensuring Parliamentary Oversight and Control over Special Services and Intelligence Bodies (hereafter – the Committee):

- *Security Service of Ukraine;*
- *Foreign Intelligence Service of Ukraine;*

- *Department of State Protection of Ukraine (previously deprived of law enforcement functions);*
- *Intelligence body of the Administration of the State Border Guard Service of Ukraine (previously deprived of law enforcement functions);*
- *Main Intelligence Directorate of the Ministry of Defence of Ukraine;*
- *State Service for Special Communications and Information Protection of Ukraine;*
- *Intelligence Coordinating Body.*

The tasks of the Committee:

01 Participation in strategic planning of special services and intelligence agencies for the next calendar year.

02 Carrying out current control over the activities of special services and intelligence agencies and hearing reports on the implementation of planned activities without detailing them and deciphering the forms, methods and persons participating in such activities.

03 Consideration of complaints about violations of the rights, freedoms and legitimate interests of man and citizen, verification of the facts of torture or inhuman treatment, as well as violation of the rights of enterprises, institutions and organisations by employees of bodies and services within the scope of the Committee.

04 Consideration of facts about emergencies that took place in these bodies and services (death or injury in the line of duty, leakage of classified information, journalistic investigations) and other issues of activity of bodies and services that caused a wide resonance in the society, and reacting to which requires the interference of the Committee.

Complaints from individuals and legal entities against the activities of bodies and services within the scope of the Committee shall be considered by the Committee only if the applicant has not received a comprehensive response to them as a result of previous appeals directly to these bodies or prosecutors.

05 Participation in the formation and development of general and special budgets (without specifying measures or ways to use funds) for the next calendar year, as well as control and analysis of public procurement bodies and services conducted by the budget.

06 Together with the Accounting Chamber, regularly hear reports on the efficiency, completeness and legality of the use of general and special (without specifying measures) budgets for the relevant calendar year.

Forming of the Committee and the Secretariat of the Committee

The Committee is formed from among the deputies of the Verkhovna Rada of Ukraine of the current convocation in a proportional manner (parity representation of all factions and groups) and carries out its work on a permanent basis.

The number of members of the Committee is determined by the Law of Ukraine "On Committees of the Verkhovna Rada of Ukraine", as well as the relevant Resolutions of the Verkhovna Rada of Ukraine, but the **number of members of this Committee must be odd**.

The current support of the Committee's activities is provided by the Secretariat of the Committee.

A motivated refusal of the body authorized for conducting special inspections for providing permissions for work with state secret, excludes the deputy's right for the membership in the Committee, and an employee of the Secretariat – for the work in the Committee, except for holding the positions the official duties of which do not provide working with state secret.

Restrictions and preventive measures

Prior to taking office, members of the Committee and staff of the Secretariat of the Committee shall give their voluntary written consent for:

- **conducting a special inspection concerning** them to grant permission to work with state secrets;
- **their periodic polygraph examination** to identify facts and circumstances that preclude the possibility of impartial work in the Committee;
- **conducting periodic and selective inspections concerning** them by the Security Service of Ukraine to identify facts and signs of interference in the activities of the Committee or the Secretariat, as well as direct / indirect influence on the process of preparation / adoption of decisions by the Committee by the special services of foreign states, their representatives, organisations and individuals.

The implementation of these proposals is possible through amendments to a number of laws of Ukraine, in particular:

- **Law of Ukraine** *"On Counterintelligence Activities"* for supplementing the list of already provided grounds for conducting counterintelligence activities;
- **Laws of Ukraine** *"On the Rules of Procedure of the Verkhovna Rada of Ukraine", "On the status of a people's deputy of Ukraine", On the Committees of Verkhovna Rada of Ukraine"*, that provide that a refusal of a member of the Committee or an employee of the Secretariat of the Committee to pass a special test for the provision of access to work with state secret deprives of the right of membership in the Committee, as well as the right to work in the Secretariat of the Committee on the positions related with working with state secret;

refusal of a member of the Committee or an employee of the Secretariat of the Committee to undergo periodic polygraphic testing deprives of the right of membership in the Committee, as well as the right to work in the Secretariat of the Committee; refusal of a member of the Committee or an employee of the Secretariat of the Committee to pass a periodic and selective inspection of the SSU deprives of the right of membership in the Committee, as well as the right to work in the Secretariat of the Committee.

Each year, the members of the Committee **must take a course of at least eight hours of lectures in one of the higher education institutions**, which in the previous calendar year was included in the TOP-15 best universities in the country, in the subject of ethics.

Access to premises

Members of the Committee have access to buildings, structures and premises of bodies and services within the scope of the Committee, **with the consent of the management of such bodies and in accordance with the Law of Ukraine "On the Status of People's Deputy of Ukraine".**

Access to materials of the cases

Members of the Committee and the Secretariat of the Committee **do not have access to the materials of the active intelligence, counterintelligence or operational and search cases.**

Members of the Committee **shall be granted access only to the materials of completed intelligence, counterintelligence or operative-search cases only in the event of an appeal** or **complaint** of an individual, legal entity or state body concerning a specific operation.

Approval of appointments

Candidates for the positions of heads of bodies within the scope of the Committee are subject to a mandatory preliminary interview with the Committee. Based on the results of consideration of candidates and interviews, the Committee provides the President of Ukraine or the Prime Minister with its written conclusions, proposals and recommendations.

Candidates for the positions of heads of functional subdivisions, as well as heads of regional subdivisions of bodies within the scope of the Committee, are interviewed by the Committee. Based on the results of the review, the Committee provides its conclusions, proposals and recommendations to the heads of the bodies within the competence of the Committee.

The implementation of these initiatives will require amendments to the Constitution of Ukraine.

Forms of work of the Committee

Public meetings. Meetings of the Committee with the participation of other people's deputies, state bodies, enterprises, organisations, institutions and citizens, media representatives, other civil society organisations are envisaged.

The number of participants in open meetings of the Committee is limited solely by the physical capacity of the premises to accommodate those present. The Secretariat of the Committee provides the possibility of photo, video, audio recording and online broadcast of the meeting.

Private meetings. Envisage the meetings of the Committee with the participation of a limited number of invited participants, in a room that meets the established criteria for information protection. Photo, video, audio recording, or online broadcast of such meetings is not conducted.

It is considered effective to **use the tools of the temporary investigative commissions, special temporary investigative commissions and temporary special commissions** of Verkhovna Rada of Ukraine that are created and function in accordance with the Rules of Procedure of the Verkhovna Rada of Ukraine.

The force of decisions of the Committee

In order to legally strengthen the decisions of the Parliamentary Committee, the strict implementation by officials of bodies and services within the competence of the Committee, it is endowed with measures of response of three orders.

Measures are listed in ascending order of their legal force, but the members of the Committee may use them in any sequence or combination.

Reaction of the first level:

01 **to make written recommendations** mandatory for the examination to the management of special services and intelligence bodies;

02 **to provide written observations** to the management of special services and intelligence bodies;

03 **to summon** to the Committee meetings (including the closed ones) **for providing written and oral testimony the employees of any rank** of the bodies within the competence of the Committee.

Reaction of the second kind:

01 **to provide written advice** to the leadership of the secret services and intelligence bodies on the need to conduct an official investigation (inspection) of specific officials or a fact that is the subject of parliamentary oversight;

02 **to provide** the management of special services and intelligence bodies with written **recommendations on the need to remove** specific officials from office for the duration of the official investigation (inspection).

03 3) to provide the management of special services and intelligence agencies with written recommendations on the need for demotion or dismissal of specific officials.

Reaction of the third level:

01 **to apply in writing** to law enforcement agencies **with a request to conduct an investigation** concerning specific heads or employees of special services and intelligence agencies, or a fact that is the subject of parliamentary control;

02 **to submit** for consideration to the heads of special services and intelligence bodies a **motivated submission with a recommendation to dismiss** the heads of functional units and heads of territorial bodies;

03 **to submit** to the Prime Minister and the President of Ukraine a **reasoned submission with a recommendation to dismiss** the heads of special services and intelligence agencies, their first deputies and deputies;

04 upon the motivated submission of the Committee, the **Verkhovna Rada of Ukraine by a simple majority of votes of people's deputies from the constitutional composition** may express distrust to the heads of bodies referred to the Committee, question their first deputies, deputies and heads of territorial bodies.

The expression of distrust by the Parliament to the officials of the bodies within the competence of the Committee entails the **dismissal of such an official from office.**

The realization of those suggestions is possible after amending the Constitution of Ukraine, the Laws of Ukraine *"On the Rules of Procedure of the Verkhovna Rada of Ukraine", "On the status of a people's deputy of Ukraine", "On Committees of Verkhovna Rada of Ukraine".*

Additional safeguards and counterbalances

Based on the results of the consideration of the recommendations and remarks provided by the Committee, the officials of the special services and intelligence bodies shall inform the Committee **within 10 working days of the results of the consideration of such recommendations and remarks.**

Appeals / requests of the Committee (within its competence) **are obligatory for consideration** by all officials of special services and intelligence bodies within 10 working days.

The officials of the special services and intelligence bodies are **required to appear when summoned to the Committee** for oral and / or written explanations / clarifications / testimonies regarding the consideration of issues referred to the Committee.

Reporting

Each year, the Committee at a public meeting (or, if necessary, in private) **pre-hears the personal reports of the heads** (or persons replacing them) of the bodies within the scope of the Committee, on the main performance indicators for the previous calendar year.

The Committee, by its decision (by a simple majority of votes), **approves the opinion** on the effectiveness of the work of the heads of the bodies within the scope of the Committee, or recognizes their work as unsatisfactory.

After reporting to the Committee, the heads of the bodies within the competence of the Committee **report to the plenary session of the Parliament** on the main indicators of activity for the previous calendar year and provide answers to the questions of the parliamentarians.

The Head of the Committee is next to speak in Parliament after the Head of a body within the scope of the Committee.

In his speech, the Head of the Committee announces the opinion of the Committee on the results of the activities of the heads of the bodies within the competence of the Committee and suggests to the president of the meeting to put to the vote **two versions of the decision:**

- to approve the results of the work of a body;
- to recognize the results of work as unsatisfactory, which entails the dismissal of a person from office.

The realization of those suggestions is possible after amending the Constitution of Ukraine, the Laws of Ukraine *"On the Rules of Procedure of the Verkhovna Rada of Ukraine", "On the status of a people's deputy of Ukraine", "On Committees of Verkhovna Rada of Ukraine".*

Conclusions

It is not really important, which concept of reform of the national special service is recognized as the most acceptable for the modern reality of Ukraine.

The only measure of success of such a reform will be the reaction of Ukrainian society and business, which should begin to perceive the Security Service of Ukraine not as an extremely brutal lumberjack, chaotically brandishing an ax around himself, but as a real, professional and cold-blooded master of knife fighting.

04

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01

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[60] **According to the letter of SSU No. 01-3664 of 28 March 2019, the investigation is ongoing.**

[61] http://www.ohchr.org/Documents/Countries/UA/ReportUkraineFeb-May2019_UKR.pdf

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[63] http://www.ohchr.org/Documents/Countries/UA/ReportUkraineMay-August2019_UKR.pdf

[64] http://www.ohchr.org/Documents/Countries/UA/ReportUkraineAugust-November2019_UKR.pdf

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Ukrainian Institute for the Future
6, Pamvy Beryndy Lane, Kyiv
uifuture.org