REPORT

THE RIGHT TO A FAIR TRIAL IN UKRAINE

2017

International Society for Human Rights

The International Society for Human Rights (ISHR) was founded in 1972 in Frankfurt am Main. It has 36 sections around the world; the German section has over 3,000 members.

ISHR is committed to the attainment of the Universal Declaration of Human Rights of 10 December, 1948. It focuses on the field of fundamental rights and civil liberties. The work is based on three pillars: public relations and educational work, individual casework and humanitarian aid.

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ABBREVIATIONS

ECHR
Convention for the Protection of Human Rights and Fundamental Freedoms

ECOSOC
United Nations Economic and Social Council

ECtHR
European Court of Human Rights

EU
European Union

IM
Interior Ministry

IMF
International Monetary Fund

ISHR
International Society for Human Rights

ORDLO
Particular Districts of Donetsk and Lugansk Regions

OSCE
Organization for Security and Co-operation in Europe

UN
United Nations

HUMAN RIGHTS ARE MADE OF TIMES OF UNREST

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

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

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

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

I like to compare human rights organizations to shops with a window to the street and goods to sell in the shop and warehouse behind. There are organizations who have a great shop window with wonderful show cases, but if you go inside the shop to buy something, you find that most of the window is blatancy and show, and does not exist in reality.

With the ISHR it is just the other way round: Inside the shop we have much to offer, great experts, devoted people, courageous activities, a great history. But the shop window

does not demonstrate this to outsiders always. Yet this is the better way: Being active in reality and available to those in need!

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

Human rights are universal. They simply apply to “people.”

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

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

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

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

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

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

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

INTRODUCTION

In 2017, the Ukrainian Section of the International Society for Human Rights (ISHR) began to monitor the level of observation of the right to a fair trial in Ukraine within the scope of its human rights work. The decision to conduct such work was based on several factors, including the appeal of lawyers and civil society representatives who reported violations of human rights in “politically motivated” criminal proceedings. Additionally, it occurred in response to the interest of the international community in information related to implementation of reforms, particularly the reform of the judiciary system, which was initiated by the Ukrainian government.

The primary form of monitoring is the attendance of court hearings by ISHR Ukraine representatives and the subsequent publication of reports based on the results of these hearings. During this work, experts from the ISHR made an effort to communicate with the defense, judges and prosecutors, as well as relying on official documents (court decisions, appeals of the parties, etc.) provided to us by both sides of the proceedings. Furthermore, communication with relatives of the defendants was an important part of the monitoring process. Each report was published on our online information-sharing platform www.humanrights-online.org, and was distributed to politicians and public figures in EU countries, - to Ukrainian lawyers and human rights defenders, and to

representatives of the OSCE monitoring mission in Ukraine, among others. Significant part of the material was available not only in Russian but also in English.

We believe that this approach (presence at court sessions and preparation of short reports[1]; examination of official documents, communication with lawyers prosecutors, judges, defendants and their relatives) allows for the collection of the material necessary to perform an analysis of the situation, to identify tendencies and problems in each individual case, and in these criminal proceedings as a group.

Unfortunately, it is impossible to cover all criminal cases that can be described as “politically motivated”. There is a limit to the physical capacity of the team engaged in this work, and, as mentioned earlier, we primarily concentrate our efforts on the proceedings that were addressed in appeals received by our organization. However, the information collected over the course of the year gives us an opportunity to prepare an annual report and to analyze the situation regarding prosecution of journalists, ex-officials and civil activists.

In this report, we attempt to highlight the main trends in human rights violations identified in the monitoring process and qualify them based on international human rights law, especially the ECHR and the rulings of the ECtHR. The report consists of two parts: an analysis of the monitoring of the right to a fair trial in Ukraine conducted by experts of the ISHR and texts of reports on the monitoring of court

[1]It is not always possible to attend each court hearing, and there is no need to write a report on every one of them

sessions, which served as a source in the preparation of the analysis.

PART I. OBSERVANCE OF THE RIGHT TO A FAIR TRIAL IN UKRAINE, ANALYSIS OF THE SITUATION & IDENTIFICATION OF PROBLEMATIC TRENDS.

This part of the report examines the general trends of human rights violations (identified during the ongoing monitoring activities) in the context of violations of the ECHR and other international treaties. In the assessment of violations of the ECHR, ISHR experts relied on the rulings of the ECtHR.

The monitoring carried out by the ISHR experts revealed a number of trends related to human rights violations. The fact that we have repeatedly encountered each of them in the process of monitoring of various criminal cases makes it possible to characterize such actions that violate human rights as trends. These trends are:

- Problems with access to the evidence of the prosecution (according to previous rulings of the ECtHR, this is in violation of paragraphs 1 and 3 of Art. 6 of the ECHR);
- Abuse of the provision of public defenders (according to previous rulings of the ECtHR, this is in violation of paragraphs 1 and 3 (c) of Art. 6 of the ECHR);

- Long-term detention of defendants in facilities not intended for this purpose (according to previous rulings of the ECtHR, this is in violation of Art. 3 of the ECHR);
- Abuse of participation of defendants in the trial by means of videoconference (according to previous rulings of the ECtHR, this is in violation of paragraph 3 (c) of Art. 6 of the ECHR);
- Systematic difficulties with the delivery of defendants to the courtroom (according to previous rulings of the ECtHR, this is in violation of paragraph 4 of Art. 5 of the ECHR);
- Unwillingness to apply alternative (to detention) measures of restraint (according to previous rulings of the ECtHR, this is in violation of paragraph 3 of Art. 5 of the ECHR);
- Pressure on the court and lawyers (according to previous rulings of the ECtHR, this is in violation of paragraph 1 of Art. 6 of the ECHR).

Let us view them in more detail.

A. Problems with access to evidence of the prosecution

During the monitoring, representatives of the prosecutor's office repeatedly blocked the examination of evidence during trial. Instead of directly examining the evidence of the prosecution (videos, documents, etc.), prosecutors repeatedly insisted on limiting the examination of evidence by consideration of protocols of expert assessments of the

actual evidence[2] or the text of the indictment[3]. There have been cases in which previously used video materials, such as confession of Darya Mastikasheva, have ceased to be used in the case as soon as the public became aware of the facts of illegal acquisition of such evidence[4]. As a result, prosecutors rely on evidence in their possession, but in every possible way hinder the request of the defense to present them to the court, so that each side (and the court) can fully examine them.

To a certain extent this also applies to the position of the prosecutor's office regarding the provision of video materials (parts of interviews, speeches, etc.), that are proof of the guilt of the defendants, for examination in court. The problem arises when the court ignores the defense's remarks that incomplete acquaintance with such materials does not provide understanding of the context of the video and prevents the full study of the case[56].

Preventing access of the defense to the evidence of the prosecutor's office also occurs during communication with witnesses. For example, in the case against former President Viktor Yanukovych, the prosecutor provided the investigating judge with videos of questioning of key

[2] Monitoring of the trial of E. Mefedov (court hearings of 11/06/2017 and 11/08/2017)
[3] Monitoring of the trial of A. Shchegolev (court hearing of 11/13/2017)
[4] Monitoring of the trial of D. Mastikasheva (court hearing of 11/01/2017)
[5] Monitoring of the trial of V. Bick (court hearing 09/27/20 17)
[6] Monitoring of the trial of V. Yanukovych (court hearing 09/02/2017)

witnesses[7]. In such a situation, actions of the defense are limited to examining the video or protest against the inclusion of such interrogations to the case; due to lack of opportunity to personally question these witnesses. Further use of this evidence in such form will not allow the the defense to fully examine the statements of the witnesses.

Violation of the ECHR

In regard to violations of the ECHR, the above mentioned situations already received a legal assessment in the ECtHR decisions. In a number of decisions (cases of “Welke and Bialek v. Poland”, “Jasper v. the United Kingdom”, “A and others v. the United Kingdom”), the ECtHR stated that prosecuting authorities should disclose to the defense all material evidence in their possession for or against the accused. Otherwise, there is a violation of paragraph 1 of Art. 6 of the ECHR (the right to a fair trial). Moreover, the ECtHR considers it to be a violation of paragraphs 1 and 3 of Art. 6 of the ECHR if the accused did not have adequate opportunity to cross-examine the witness at the trial (cases of “Schatschaschwili v. Germany”, “Al-Khawaja and Tahery v. the United Kingdom”, "Solakov v. "the Former Yugoslav Republic of Macedonia"”).

B. Abuse of the institute of public defenders

During the monitoring, ISHR experts have repeatedly encountered attempts to impose the services of a public defender on the defendant, which is a lawyer appointed by

[7] "Maidan case" monitoring of the trial of V. Yanukovych

the Center for Free Legal Assistance (a government institution). Often, the court promptly appointed a public defender even in the case when accused already had his/her own lawyer. The absence of an official lawyer in the courtroom (often caused by late notification of the lawyer about the time of the hearing), can serve as a reason for the court to try to impose a public defender[8]. The defendants have not always been able to block such actions[9]. The threat of "swapping" the defender increases if the official lawyer of the accused resides in another city[10] or hearings are conducted during non-working hours (late evening or night)[11].

Other forms of abuse of the provision of public defenders includes appointment of a public defender when the defendant decided to withdraw his official lawyers[12]. In such a situation, state-appointed lawyers are unable to coordinate their position with the client, who refused to participate in the process; this in turn often limits the participation of the state-appointed lawyer in hearings to statements on inability to comment on what is happening in court until they coordinate their position with the

[8] Monitoring of the trial of S. Denisyuk (court hearing 11/09/2017)
[9] Monitoring of the trial of E. Mefedov (court hearings 10/11/2017 and 10/18/2017)
[10] Lawyers representing the interests of D. Mastikasheva (the trial is taking place in Dnepr), E. Mefeadov (the trial is taking place in Odessa) reside in Kiev so as defenders of V. Myravitski (the trial is taking place in Zhytomyr).
[11] Monitoring of the trial of S. Denisyuk (court hearing 11/09/2017)
[12] Monitoring of the trial of V. Yanukovych (court hearings 07/06/2017 and 07/12/2017)

client[13]. ISHR experts also witnessed a situation in which the motion of the defense for postponement of the hearing was interpreted by the investigating judge as an attempt to delay the process, and lead to the appointment of a state defender[14].

Violation of the ECHR

The imposition of a public defender, if not caused by the lack of sufficient funds to pay for legal aid by the accused[15], constitutes a violation of Art. 6, paragraphs 1 and 3 (C), of the ECHR. According to the case-law of the ECtHR (case of "Hanzevacki v. Croatia") and the regulations of the Convention, a person charged with a criminal offense who does not wish to defend himself personally must be able to have recourse to legal assistance of his own choosing. It is obvious that the participation of the public defender against the will of the defendant violates this provision, and accordingly is a violation of the abovementioned paragraphs 1 and 3 (C) of Art. 6 of the ECHR.

[13] Monitoring of the trial of V. Yanukovych (court hearings from 09/28/2017 to 10/19/2017)

[14] This situation took place in one of the cases against V. Yanukovych. In December 2017, at the initiative of the investigating judge, a public defender was appointed, after the official lawyers of Yanukovych tried to appeal to the judge with a request to postpone the trial due to the need to attend another trial against Yanukovych at the same date and time.

[15] Or some other (special) circumstances

C. Long-term detention of defendants in facilities not intended for such purpose

Some accused of the so-called "tax collectors case" are kept in a detention centre designed only for short-term detention. Accused parties in the "tax collectors case" are kept in custody until their appointed bail is met. However, four of the accused (S. Denisyuk, I. Bondarenko, A. Antipov and V. Dubel)[16] failed to make the necessary deposit and therefore have remained in custody since the summer of 2017.

While being held in a detention centre, which is designed only for short-term detention, for more than six months, they were deprived of access to sufficient medical care and other necessary conditions for normal existence[17]. These detention centers simply do not have the necessary infrastructure to provide adequate care and humane living conditions, as they are not designed for long-term detention. Such a situation contradicts the norms of national legislation, for example, paragraph 2.1 of the order of Ministry of Internal Affairs "On approval of internal regulations in temporary detention facilities of agencies of internal affairs of Ukraine".

Violation of the ECHR

The ECtHR case-law considers such a situation to be a violation of the ECHR. For example, in the case of "Schebet v. Russia", the ECtHR ruled that holding a defendant in

[16] ISHR is studying the materials of the cases of I. Bondarenko, A. Antipov and V. Dubel. Meetings with their lawyers were conducted.
[17] Monitoring of the trial of S. Denisyuk (court hearing 11/09/2017)

custody for several months in a short-term detention centre was a violation of Art. 3 (prohibition of torture) of the ECHR.

D. Abuse of participation of defendants in the trial by means of videoconference

Modern means of communication make it possible to significantly simplify the participation in the trial of persons who are unable to come to the place of the court session. However, the achievements of technological progress and their use in judicial procedures do not always contribute to the observance of human rights. In certain cases, the participation of the accused in a trial in the form of a videoconference may lead to a violation of his/her rights. There is a significant risk of depriving the defendant of the ability to effectively and confidentially communicate with his defense[18]. The situation may worsen if, when the decision to use the format of videoconference for the participation of the defendant is made, the court is guided not by objective reasons (for example, the distance between the place of the hearing and the place of detention of the defendant), but by the desire to ease the organization of the hearing. For example, in the case of A. Schegolev, the reason for participation of the defendant in a court session in the format of a videoconference is the

[18] Monitoring of the trial of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (court hearing 10/26/2017)

court's inability to provide security to the defendant in the event of his physical presence in the courtroom[19].

Another form of abuse of participation in the meeting through the videoconferencing is the refusal to hold a videoconference in accordance with the norms of international law. In the case against the former president of Ukraine V. Yanukovych, the court refused to follow the rules of the European Convention on Mutual Assistance in Criminal Matters when organizing a videoconference with V. Yanukovych. According to this document, organization of the video communication must be conducted in cooperation with the competent authorities of Russia (where the ex-president resides). During the whole process of the trial, the court did not refer to any legislative norms allowing such a departure from the international obligations assumed by Ukraine[20].

Violation of the ECHR

In a situation when a defendant is not represented by a group of lawyers (so some of them can be with the defendant and others can be present in the courtroom), there is a threat of violation of the norms of the ECHR when such a defendant is participating in a court session in videoconference form. According to the previous rulings of the ECtHR (case of “Sakhnovskiy v. Russia”), if the accused does not have the opportunity to communicate effectively and privately with his lawyer during videoconference, there is a violation of paragraph 3 (c) of Art. 6 of the ECHR.

[19] Monitoring of the trial of A. Schegolev (court hearing 10/10/2017)
[20] Monitoring of the trial of V. Yanukovych (court hearing 05/18/2017)

E. Systematic difficulties with the delivery of defendants to the courtroom

During the period of monitoring, ISHR experts repeatedly observed the following situation: the defendant was not delivered to the courtroom at the time of the start of the court session (while the court and other participants in the judicial process were already present in the courtroom). This situation occurred in the trial against journalist V. Muravitsky[21], in which the legal defenders of the journalist (living in another city) had to travel a long distance, only to learn (after their arrival) about the postponement of the meeting. A similar situation occurred in the trial against a minor, M. Nitsenko.

The most serious violation of this kind is the systematic absence in the courtroom of D. Mastikasheva during her detention in a psychiatric clinic (for compulsory psychiatric examination)[22]. During the entire stay in the clinic D. Mastikasheva never had the opportunity to attend any court sessions on the appeal of her defense on the decision to send her to a psychiatric examination. Representatives of the medical institution reported that they did not have the authority to bring the suspect to the court, while the prosecutor stated that after sending D. Mastikasheva to the clinic, he was not responsible for her movement (including her attendance at court)[23]. Attempts made by the court to

[21] The journalist was not brought to court on November 24, 2017
[22] Monitoring of the trial of D. Mastikasheva (brief information about the situation in November 2017)
[23] Ibid.

oblige the prosecutor to deliver D. Mastikasheva to the next hearing did not change the situation.

Violation of the ECHR

The situation in the abovementioned processes is in violation of the ECHR. In the cases of “Bataliny v. Russia” and “Gorshkov v. Ukraine”, the ECtHR ruled that the detainee's access to the judge should not depend on the good will of the detaining authority or be activated at the discretion of the medical corps or the hospital authorities, otherwise it is a violation of Art. 5 of the ECHR. These decisions of the ECtHR, primarily point to violations that have occurred in the case of D. Mastikasheva. During the time spent in a psychiatric clinic, she was unable to appear before the court for an appeal on the decision to send her to a compulsory psychiatric examination. However, in the case of V. Muravitsky and M. Nitsenko (both held in detention facilities), the fact of the defendant's periodic failure to attend court hearings raises questions from the perspective of compliance with the norms of the ECHR.

F. Unwillingness to apply alternative (to detention) measures of restraint

In nearly all cases included in our monitoring, the defendants were held in custody (as a measure of restraint). There are only two exceptions; the trial against V. Yanukovych, in which the defendant is abroad, and V.

Bick's trial, in which the defendant is under house arrest[24]. Many (A. Schegolev, M. Nitsenko, E. Mefedov, A. Melnik) were held in pretrial detention facilities for two or three years. In all of the cases, the prosecutor's office requires the defendants to be held in custody as a measure of restraint. Moreover, if the court made a decision to change the form of restraint to a softer option, the prosecution always protested against such decisions in the court of appeals[25] or promptly put forward a new charge in order to keep the defendant in custody[26].

Court decisions on detention or on the extension of detention, as a rule, lack prosecutor's justification for the necessity of applying this particular measure of restraint. Although, according to the law, the prosecutor's office must justify the need for detention, in reality it is the defendant's lawyers – who often have to prove the possibility of applying an alternative form of restraint for their client.

The situation is complicated by long intervals between court sessions; the usual interval is one to one and a half months[27]. The case against former President Yanukovych remains an exception, in which hearings are held as often

[24] It should be noted that in the case of V. Bik, he spent almost three years in custody before he was released, and he was put under house arrest in autumn of 2017

[25] Monitoring of the trial of V. Bick (court hearing 11/20/2017)

[26] Monitoring of the trial of E. Mefedov (court hearings 10/11/2017 and 10/18/2017)

[27] For example, the monitoring of the trial of M. Nitsenko (court hearing 08/28/2017)

as several times per week; this is not typical for Ukrainian judicial practice.

Of all the processes monitored by ISHR experts in Ukraine, the defendants were released from custody in only two cases. In the first case, the defendant was sent under house arrest[28]; in the second, the defendant was freed due to the exchange of prisoners between the Ukrainian authorities and the representatives of ORDLO (uncontrolled by the government territories in the east of the country), and not by decision of the court[29].

Violation of the ECHR

The situation that has developed in most of the described cases contradicts paragraph 3 of Art. 5 of the ECHR. The decisions of the ECtHR (i.e. the case of "Kharchenko v. Ukraine") highlights the following limitation when choosing an exceptional measure of restraint: Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty. Moreover, according to paragraph 3 of Art. 5 after a certain period of time, the existence of reasonable suspicion does not in itself justify the deprivation of liberty, and the judicial authorities should give other grounds for continuing detention. According to this decision of the ECtHR, it is

[28] Monitoring of the trial of V. Bick (court hearing 10/13/2017)
[29] Monitoring of the criminal case against Maxim Nitsenko (exchange process)

important for the national authorities to consider alternatives to detention in custody.

The ECtHR decision in the case of "Kharchenko v. Ukraine" refers to the so-called "pilot judgments", the purpose of which is to cover large-scale and systemic violations of human rights in a particular state. The problems described above, which ISHR experts encountered during monitoring of the observance of the right to a fair trial, indicate that the problems associated with the abuse of the use of an exceptional measure of restraint are still systemic.

G. Pressure on the court and lawyers

During the monitoring, ISHR experts became aware of pressure on the court and lawyers. In the proceedings against A. Melnik, due to actions taken by the local government[30], the judge which changed the measure of restraint for the defendants from detention to house arrest[31] was removed from office. The course of proceedings against A. Melnik could also be influenced by statements of the Minister of Internal Affairs A. Avakov, who declared that he is responsible for murder of mayor of Kremenchug even before A. Melnik was arrested. Pressure on judges who tried to change the measure of restraint was also exerted in other cases. For example, after a panel of judges ruled to release E. Mefedov from custody, the court

[30] The regional council (parliament) of the Poltava region sent an appeal to the Supreme Council of Justice

[31] Monitoring of the trial of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (court hearing 09/27/2017)

room was blocked by unknown group of people (presumably activists, supporters of the Maidan), which refused to release judges from the room until they changed their decision. As a result, E. Mefedov remained in a pre-trial detention center[32]. Some facts in the case against V. Yanukovych also question the impartiality of the court. For example, the Prosecutor General of Ukraine, Yu. Lutsenko, publically named all members of the panel of judges in the case against V. Yanukovych before it was appointed with the help of special automated system designed especially for random appointment of judges[33].

Forms of pressure also affected lawyers that defended the accused. Lawyers representing the interests of A. Schegolev[34] and E. Mefedov[35] were attacked by radical activists right in the courthouse. In some cases, the active civil position of lawyers and the direct performance of their professional duties may lead to disciplinary or criminal prosecution[36]. During the interrogation of witnesses which hold high positions in the political hierarchy of Ukraine (Minister of Internal Affairs A. Avakov, former Prime Minister A. Yatseniuk), the rhetoric used by witnesses

[32] Monitoring of the trial of E. Mefedov (court hearings 10/11/2017 and 10/18/2017)
[33] Monitoring of the trial of V. Yanukovych (court hearing 05/04/2017)
[34] Monitoring of the trial of A. Schegolev (court hearing 10/10/2017)
[35] Monitoring of the trial of E. Mefedov (court hearings 10/11/2017 and 10/18/2017)
[36] "Maidan case" monitoring of the trial of V. Yanukovych

(endowed with power) can be perceived as an attempt to exert pressure over the defense[37].

Violation of the ECHR

According to the rulings of the ECtHR, acts that can be interpreted as applying pressure on the court or lawyers – casts the very implementation of fair justice into doubt and violates paragraph 1 of Art. 6 of the According to the rulings of the ECHR. In the case of "Kinsky v. The Czech Republic", the ECtHR came to the conclusion that, regardless of whether there was actual pressure on the court, certain activities performed in relation to judges cast doubt on "the appearance of impartiality". Serious concerns arise when the actions of government officials (or others capable of affecting the well-being of judges) can be perceived by members of the court as evidence of close monitoring of a specific criminal proceeding. In the opinion of the ECtHR, such actions are particularly alarming when they are connected with public statements by politicians regarding the court. In the case of "Sovtransavto Holding v. Ukraine", according to the decision of the ECtHR the intervention of representatives of the authorities through official appeals, decisions, etc. is incompatible with the notion of an "independent and impartial tribunal", within the meaning of Article 6 § 1 of the ECHR.

The ECtHR's position on pressuring lawyers is set out in the cases of "Elci and Others v. Turkey" and "Kolesnichenko v. Russia". The ECtHR emphasizes the central role of the legal

[37] Monitoring of the trial of V. Yanukovych (court hearings from 12/04/2017 until 12/11/2017)

profession in the administration of justice and the maintenance of the rule of law. The freedom of lawyers to practice their profession without undue hindrance is an essential component of a democratic society and a necessary prerequisite for the effective enforcement of the provisions of the ECHR, especially in guaranteeing the right to a fair trial and to personal security. Thus, persecution or harassment of members of the legal profession strikes at the very heart of the ECHR system.

CONCLUSIONS

During the monitoring period, ISHR experts identified a number of negative trends[38] and proposed the qualify them, based on the rules of the ECHR and the decisions of the ECtHR. The information obtained during the collection and analysis of data[39] indicates that the main negative trends are not unique or intrinsic to Ukraine alone. This is supported by the existence of a large number of ECtHR judgments on similar violations; their geography shows that problems exist in different areas of the Council of Europe. Therefore, the main issue is not the existence of violations, but whether the state is taking steps to eliminate these negative trends. In the case of Ukraine, this topic is of a particular interest, as the authorities have repeatedly stated their commitment to reform, especially regarding

[38] Each one of which affects at least a few cases monitored by ISHR experts

[39] The sources were not only the materials of reports on the visit to the court sessions, but also the texts of lawyers' appeals (to the ISHR), complaints to the ECHR and other documents

reform of the judicial system. This aspiration is fixed in official agreements between Ukraine and international institutions (such as the EU, the IMF, etc.).

We consider it important not only to collect, analyze, and further disseminate the materials of our work among politicians and the public of the countries of the Council of Europe, but also to work on interaction with the state bodies of the country in which our experts identified certain problems. In this case, we are referring to about the representatives of the Ukrainian state. We believe that this report will also be of interest to all participants in the judicial proceedings taking place in Ukraine. These include not only lawyers of the defense, but also prosecutors and judges representing the Ukrainian government.

PART II. REPORTS ON THE MONITORING OF TRIAL PROCEEDINGS OBSERVED BY THE EXPERTS OF THE INTERNATIONAL SOCIETY FOR HUMAN RIGHTS IN 2017

The second part of the report includes the texts of the reports prepared by the ISHR experts during 2017. This information gives the opportunity to trace the development of the judicial proceedings in a particular case, to understand how the negative trends are being formed[40], and to see whether parties in the proceedings attempted to prevent their formation.

Cases are presented in alphabetical order; reports on specific court sessions are arranged in chronological order[41].

MONITORING OF THE TRIAL OF VLADIMIR BICK

Monitoring of the trial of V. Bick (court hearing 09/27/2017)

On September 27, a court hearing was held on the case of Vladimir Bick, Ex-head of the Department of Counterintelligence Protection of the interests of state in the sphere of information security of the Security Service of Ukraine (SBU), who is accused of high treason via assisting a foreign state and its representatives to conduct subversive activities against Ukraine. Experts of the

[40] In terms of respect for the right to a fair trial

[41] Full list of reports (with text) is available in Russian edition of the annual report

International Society for Human Rights are following these proceedings since the spring of 2017. The material collected during the monitoring indicates some trends that are being in conflict with observance of the right to a fair trial and other human rights.

The charge. General Bick is accused of collection and transfer to the Security Service of Russia (FSB) of video materials (obtained from the open sources) compromising the Maidan supporters, representatives of the then opposition forces, in order to convince the population of Ukraine of the fallaciousness of the European choice. Thus, according to the prosecutor's office, V. Bick assisted the Russian intelligence service in the "information war" against the activists of the Maidan (winter events of 2013-2014). Those materials were used by the FSB of the Russian Federation to change the consciousness of a part of the population of Ukraine, which led to illegal referendum in the Crimea, Donetsk and Lugansk regions, and loss by Ukraine of a part of its territory.

During the trial it became clear that General Bick's contacts with Russian intelligence service were carried out as part of his official duties. V. Bick occupied the post of a Chairman of the Commission on Information Security of the Council of Heads of Intelligence services and Law Enforcement Agencies of the CIS countries. International contacts (including those with representatives of Russian intelligence service) within this organization are regulated by the treaty of 1992 (which has not been denounced by Ukraine yet).

It remains unclear how the chairman of the CIS Information Security Commission could not contact with the FSB representatives and at the same time remain in this position? Nevertheless, such understanding of public service is characteristic of some representatives of today's government, especially when it comes to political opponents. For example, according to the law on lustration, officials who worked during the presidency of Viktor Yanukovych should have left their posts on their own as soon as the events on Maidan began, otherwise they can be held responsible, for continuing their duties.

The trial. The trial of V. Bick has been going on for almost three years; the suspect spent all that time in the pre-trial detention center. The court regularly meets in order to extend his term of detention, and some court hearings are held only for this purpose. Like most cases that have political motivation, General Bick's case is being considered "without rushing", court hearings are held on average once per month or month and a half. The situation is complicated by the change in the composition of the court that took place in the summer of 2017, after which the proceedings of the case started from the beginning. Under such circumstances, the principle of conducting a trial within a reasonable time is completely ignored.

During all that time V. Bick was deprived of the opportunity to seat at the table of defense together with his lawyers in the courtroom. Only recently he became a full-fledged participant in the trial, which is necessary to observe the adversarial principle, since the accused received the

opportunity to constantly communicate with his defenders during the court hearing.

It is worth to specifically note the methods used for submitting evidence by the prosecutor's office. During the trial, the prosecution provides the court only with extracts of the videos that V. Bik collected. Such a submission of the materials does not provide an opportunity to fully understand the context in which the videos were shot, impedes a comprehensive examination of the evidentiary basis. A similar approach of providing evidence by the prosecutor in the form of "cut" videos was observed by the ISHR experts in the case of high treason of ex-President V. Yanukovych.

Monitoring of the trial of V. Bick (court hearing 10/13/2017)

On October 13, 2017 a court hearing was held on the case of Vladimir Bick, Ex-head of the Department for Counterintelligence Protection of the interests of State in the sphere of information security of the Security Service of Ukraine (SBU), who is accused of high treason via assisting a foreign state and its representatives to conduct subversive activities against Ukraine (transfer of information compromising the Maidan). During the court session, the question of choosing a measure of restraint for General Bick (who was held in custody for the last three years) was decided.

After a long discussion (for more than 6 hours), the court decided to change the measure of restraint for V. Bick from custody to house arrest. In its decision, the court agreed

with the side of the defense, referring to the national legislation and decisions of the European Court of Human Rights (“Kudla v. Poland”, “Wuhan v. Ukraine”, “Hummatov v. Azerbaijan”, “Petuhov v. Ukraine”, “Kharchenko v. Ukraine”) according to which the defendant's detention can only be applied if the prosecutor's office proves the validity of such a measure (which in itself violates human rights). According to the court, during the time of V. Bick's stay in the pretrial detention facility, the prosecution did not provide enough materials for the court to establish the relevance and degree of risks associated with defendant's release from custody.

In recent months, in the case of general Bick, there has been a tendency to refrain from limiting the rights of the accused caused by procedural norms. In the summer of 2017, the court allowed V. Bick to be seated next to his lawyers during the court session, which made him a full participant in the trial (because the accused had the opportunity to freely communicate with his lawyers during the trial). As it was already mentioned, at the last session the court refused to apply to V. Bick an exceptional measure of restraint (detention), such action stopped the restriction of his right to personal freedom (it should be noted that such restriction, according to procedural legislation, should only be applied in cases specified by law).

It is worth pointing out that the ISHR experts observed the situation when the accused, transferred under house arrest, were soon put back in to custody, and the judges who ruled on such decision were dismissed from the case.

For example, in the case of the head of the television company "Vizit" A. Melnik. After the intervention of representatives of local authorities, the accused was again detained and the judge, who decided to change the measure of restraint to a softer one, was threatened with dismissal.

Monitoring of the trial of V. Bick (court hearing 11/20/2017)

On November 20, 2017 a court hearing was held on the case of Vladimir Bick, Ex-head of the Department for Counterintelligence Protection of the interests of State in the sphere of information security of the Security Service of Ukraine (SBU), who is accused of high treason via assisting a foreign state and its representatives to conduct subversive activities against Ukraine (transfer of information compromising the Maidan). Experts of the International Society for Human Rights continue monitoring this litigation.

Upon the court hearing on 10/13/2017, during which the court had ruled to change a measure of restraint for Vladimir Bick from detention to house arrest, in the trial appeared a new prosecutor. Straight away, the prosecution filed a petition requesting a measure of restraint to be changed (considering that the accused must be sent back to a pre- trial detention centre). According to the prosecutor, General Bick cannot remain under house arrest due to the following: 1) the executive authorities do not have a special ankle bracelet detecting whereabouts of the accused; 2) the Ukrainian authorities do not control

certain parts of the state border, this circumstance can be used for escaping from the country abroad; 3) Vladimir Bick can exercise pressure on witnesses. In the course of the court hearings the representative of the prosecution stated that General Bick at large could influence the witnesses, since their evidence in court are conflicting with the evidence earlier provided by them in writing. The lawyers of the accused stated that it was not the case and the evidence by the witnesses coincided, and assumed that the new prosecutor did not familiarize herself with the materials of the case. The court refused to satisfy the petition, having left the accused under a 24-hour house arrest.

Experts of the International Society for Human Rights underline more than once that according to the European Convention on Protection of Human Rights and Fundamental Freedoms and to the practice of the European Court of Human Rights (for instance, in the case of “Kharchenko v. Ukraine”) the continued detention can be only justified when those actions are of a certain public interest, which, in spite of the presumption of innocence, outweighs the rule of respecting an individual freedom. Inability of the state authorities to provide the necessary technical means (an ankle bracelet) and to ensure control over the whole state border can hardly be regarded as the matter of such public interest.

MONITORING OF THE TRIAL OF STANISLAV DENISYUK

Monitoring of the trial of S. Denisyuk (court hearing 11/09/2017)

On November 9, a court session was held in the Pechersk District Court of Kiev on the case of Stanislav Denisyuk, the former head of the Kharkov region tax inspection, who is accused of creating a criminal organization (under the leadership of former Ukrainian President Viktor Yanukovych) and abuse of power. Experts of the International Society for Human Rights have begun monitoring this litigation.

S. Denisyuk is one of the accused in the so-called "tax case" (a series of criminal cases against dozens of high officials of the tax inspection who worked during the presidency of Viktor Yanukovych). The defendants of this "case" are accused of participation in the criminal organization of V. Yanukovich. ISHR experts already faced trials in cases related to work in the government during the previous authorities, which were declared as “criminal” by today's successors (the case of V. Bick, the case of A. Schegolev, etc.). For example, according to the law on lustration, officials during the presidency of Viktor Yanukovych had to resign from office on their own as soon as the events on the Maidan took place, otherwise they can be held responsible (basically for continuing their duties). The use of such approach to the figurants of the "tax case" is also traced in the selection of documentary evidence of the guilt of suspects, among which are orders for appointment to the position within the system of Ukrainian tax inspection. It is worth noting that V. Yanukovych is not being accused

of these crimes (the creation of a criminal organization and abuse of power in the context of the "tax case").

In the course of studying the case materials, ISHR experts identified the following facts, which are in violation of the right to a fair trial:

1) After his arrest in May 2017, S. Denisyuk was placed in the Kiev temporary detention facility (IVS), and not in the pre trial detention center (SIZO) as it usually happens. The suspect is held in the IVS for about six months, which contradicts with paragraph 2.1 of the order of Ministry of Internal Affairs "On approval of internal regulations in temporary detention facilities of agencies of internal affairs of Ukraine". Given the age (60 years) and chronic illnesses, S. Denisyuk constantly needs medical assistance. But, IVS simply do not have the necessary infrastructure to provide adequate care and humane living conditions, as they are not designed for long-term detention. This situation is regarded by the European Court of Human Rights (ECtHR) as a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms. For example, in the case of “Schebet v. Russia”, the ECtHR found that the very fact of detention for several months in an isolator intended only for short-term detention was a violation of Art. 3 (prohibition of torture) of the European Convention.

2) For half a year the court sessions are held only to prolong the detention of S. Denisyuk in custody. Since the society showed high interest in the case, the court has attempted to limit the presence of the public in court

hearings. Some meetings were even held after midnight. At one of the hearings the judge demanded that everyone present in the courtroom had to surrender their passports to the representatives of the court.

The court holds "sudden" meetings. On November 6, lawyers and relatives of S. Denisyuk were informed about the court hearing only two hours prior to the meeting. After that the hearing did not start until the end of the working day, the judge and the prosecutors appeared in the courtroom only after the departure of lawyers and representatives of civil society. When the defendant demanded to call his lawyers, the court proposed to him to use the services of a public defender. Such a proposal of the court may be regarded as a violation of paragraph 3 (c) of Article 6 of the European Convention. In the case of “Hanzevacki v. Croatia”, the ECtHR noted that a person charged with a criminal offence who does not wish to defend himself in person must be able to have recourse to legal assistance of his own choosing.

On November 8, after restricting the presence of the public, the investigating judge decided to hold a closed meeting at which he ruled on the extension of the exceptional measure of restraint in the form of detention for S. Denisyuk.

MONITORING OF THE TRIAL OF DARYA MASTIKASHEVA

Monitoring of the trial of D. Mastikasheva (court hearing 11/01/2017)

On November 1, 2017, in Dnepr (Ukraine), a trial was held on the case of Darya Mastikasheva, a Ukrainian citizen residing in Russia. She is accused of a high treason performed by way of recruiting veterans of the antiterrorist operation in the East of Ukraine (ATO) to imitate preparation of terrorist acts in Russia, which would be used by the Russian intelligence service to discredit the Ukrainian authorities. The experts of the International Society for Human Rights started monitoring of this litigation.

Abduction. On August 15, 2017, Darya Mastikasheva was kidnapped. According to the claim by the accused, armed masked men had blocked her car and took her in the unknown direction. In the course of several days she was subjected to torture and intimidation of assault for her mother and son, unless she claimed that she was cooperating with the Russian intelligence service and was instructed by them to come to Dnepr for the purpose of recruiting the ATO veterans to be sent to Russia and committing "…actions which, while not constituting any social threat, but based on a number of certain features can resemble the actions aimed at preparation of a terrorist act or a diversion" (quoted based on the text of the notice of suspicion). After Darya Mastikasheva gave her consent, a video with her confession was shown by the Head of the Security Service of Ukraine (SBU) Vasily Gritsak at a press-conference in Kiev (held on August 17, 2017)

where the Head of SBU made a report about detention of a dangerous spy. It is important to note that the official detention of Darya Mastikasheva occurred **after** the press-conference of Vasily Gritsak. This means that in the course of two days she was subjected to an unlawful detention aimed at "making" her confess by a way of torture and intimidation. It has not been until August 17, 2017 that the lawyer was admitted to the accused. The fact of tortures the woman was subjected to is confirmed by a photo made by her mother, the picture clearly shows the signs of beatings on the face of Darya Mastikasheva. According to the lawyer, the guards who had allowed picturing of the accused being in such a state are already fired.

Psychological expertise. During her time in custody, Darya Mastikasheva staged a hunger strike as a protest against non-provision of the medical aid that she required due to aggravation of her physical condition resulting from the tortures she was subjected to (from August 19, 2017 she has not received any medical aid). After that the investigator decided to hold a psychological examination. On October 31, 2017, the SBU staff took the accused to a psychiatric hospital for holding an examination. The demands of Darya Mastikasheva to provide for a presence of her lawyer for the time of the examination were ignored. The doctor who refused to identify his personal information to defense (provided only the name and patronymic name) intimidated Darya Mastikasheva that she would be placed into the psychiatric hospital for sixty days, unless she agreed for an examination without a lawyer present.

ISHR experts note that in the event of an insanity plea in respect of Darya Mastikasheva she will be deprived of legal capacity, which means all her claims (on abduction, tortures etc.) will have no legal effect. Therefore, representatives of law enforcement bodies would be able to escape any responsibility for those actions.

The course of the court hearing. A petition of appeal challenging detention of Darya Mastikasheva, which was filed by defense, was considered at the trial. The court ruled to continue keeping the accused in the pre-trial detention centre. In the course of the court hearing, several petitions made by defense are of interest to the monitoring of the right to a fair trial:

1) The lawyer made an intercession that a video containing a confession by Darya Mastikasheva shown at the press-conference by Vasily Gritsak be included into the case. As it turned out in the process of the hearing, not only the video wasn't included into the case but, according to the answers received from the law-enforcement bodies (obtained upon the lawyer's request), such video does not exist, since no official video recording of Darya Mastikasheva interrogations was performed.

The lawyer informed that he had a recording of the video but the court refused to include it in the materials of the case. Grounding their decision, the panel of judges claimed that another criminal case was opened based on the fact of tortures and abduction of Darya Mastikasheva and that the video was not an evidence in the case of a high treason. It must be noted that the video can be the evidence of an

illegal detention of the accused and in such a case the evidence obtained (testimony by Darya Mastikasheva, searches of her home and car) could not be used in court. This is confirmed by previous decisions of the European court for human rights (cases “Grigoriyev v. Ukraine” and “Nechiporuk and Yonkalo v. Ukraine”) according to which any evidence obtained as the result of tortures constitutes a violation of article 6 of the European Convention on Protection of Human Rights and Fundamental Freedoms and serves as a ground for re-consideration of a case.

2) The lawyer Valentin Rybin claimed he was not given a possibility to make copies of the documents based on which a decision on keeping Darya Mastikasheva in custody had been ruled. The court allowed the defender only to familiarize himself with the materials. Also, at the time when the video with confession of the accused was watched, the court retreated into the deliberations room and, by doing so, deprived the parties of a possibility to give comments on that evidence.

The practice of “retaining” the information which is important to the litigation, such as refusals to provide copies of documents to the side of defense and consideration of evidence in the absence of the parties of the process does not comply with the adversarial principle and the principle of equality of parties, which constitutes a violation of the right to a fair trial.

3) It turned out in the course of the hearing that no investigator visited Darya Mastikasheva in the case of abduction and torture, and the case itself was opened after

the lawyer had filed a claim on omission to act on the part of law-enforcement bodies.

This case is an important component of the whole process against Darya Mastikasheva, if the fact of abduction and torture is acknowledged, the episode with accusation in a high treason will lose a major part of the evidentiary base.

***Monitoring of the trial of D. Mastikasheva (brief information about the situation in November 2017*)**
On December 1, 2017, in Dnepr (Ukraine), a trial should have been held on the case of Darya Mastikasheva, a Ukrainian citizen residing in Russia. She is accused of a high treason performed by way of recruiting veterans of the antiterrorist operation in the East of Ukraine (ATO) to imitate preparation of terrorist acts in Russia, which would be used by the Russian intelligence service to discredit the Ukrainian authorities. As it turned out later, Darya Mastikasheva was kidnapped and unlawfully detained for several days, whereupon she was apprehended by the Ukrainian Security Service (SBU).

After the fact of abduction and tortures exercised in respect of Darya Mastikasheva became known to a wider public, the authorities ruled to take her to a compulsory psychiatric examination. The appeal petition filed by the lawyer in respect of such a ruling by the court should have been considered on December 1, 2017.

Chronology of the latest events. On November 9, 2017, during a closed court hearing (after removing

representatives of civil society from the court room) a decision was passed to send Darya Mastikasheva for a compulsory psychiatric examination. The decision was motivated by her alleged “refusal from participation in the majority of investigative actions”.

On November 24, 2017, prior to the time when the above-mentioned court decision would come into force (according to the law, no decision shall come into force until a term when the parties could challenge it elapse). Darya Mastikasheva was sent to an in-patient department of the psychiatric clinic. It must be noted that transfer to the psychiatric clinic occurred on Friday, on the eve of two days-off when no examination would be performed. The lawyer stated that he was not aware of his client transfer to a medical institution.

On December 1, 2017, a court hearing should have been held on the appeal petition filed by Valentin Rybin, the lawyer, in respect of decision of the court to send Darya Mastikasheva to a compulsory psychiatric examination. The court hearing, however, did not take place, since Darya Mastikasheva was not transported to court. Representatives of the medical institution stated they were not empowered to transport the suspect to court, while the prosecutor’s office stated they were not responsible for her movements (including those to the court) after Darya Mastikasheva was placed into clinic.

The court assigned the prosecutor’s office the responsibility to transport Darya Mastikasheva to the next court hearing scheduled for December 11, 2017. Thus, there occurs a

situation when the woman is being kept in a psychiatric hospital for two weeks already without any actual decision of the court (since the decision by court dated November 9, 2017 has not come into force yet).

Compliance of the events to the norms of the European convention of human rights and fundamental freedoms (European convention) Analysis of practice by the European court for human rights (ECtHR) allows to assume that some facts occurring in the process of Darya Mastikasheva can contradict with the European convention:

1. The mere fact of sending the defendant for a compulsory psychiatric examination due to unwillingness to cooperate with investigation can be qualified as tortures. In the case "Selmouni v. France" ECtHR provides the following definition of "tortures" – willful causing of a strong pain or suffering, physical or psychological, in particular, for the purpose of getting information, punishment or intimidation. In the case of Darya Mastikasheva, sending the accused to a psychiatric clinic, due to her "refusal from participation in the majority of investigative actions" can be qualified as causing a psychological suffering aimed at getting information (i.e. start of cooperation with investigation) or punishment (for refusal to cooperate).

2. In the course of the court hearing dated December 1, 2017, based on statements by the pre-trial detention centre administration and those of the psychiatric clinic, none of them had any authority or possibility to transport Darya Mastikasheva to the court. This situation may contradict with the norms of the European convention. In

the case “Gorshkov v. Ukraine” ECtHR noted that access of a detained person to a judge must not depend on a good will of pre-trial detention centre or medical institution administration. Therefore, the “argument” between the prosecutor’s office and the medical institution administration itself points out either to a collision in deciding on participation in court hearing of persons who were placed into a hospital, which results in violation of the European convention, or to a reluctance of the responsible persons to execute their duties, which results in violation of Darya Mastikasheva’s right to a fair trial.

MONITORING OF THE TRIAL OF ALEKSANDER MELNIK

Monitoring of the trial of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (court hearing 09/27/2017)

On September 27, a court session took place in Poltava on the case of Aleksander Melnik, the head of the “Vizit” television company, and one of the accused (together with A. Kryzhanovski, I. Pasichnyi and I. Kunik) in the murder of the mayor of Kremenchug A. Babayev and the judge of the Kremenchug court A. Lobodenko.

This is the first meeting that took place after the transfer of the case to the Oktyabrsky District Court of Poltava. The constant change of court jurisdiction in the case of A. Melnik and others has become a steady trend of this litigation. Since the winter of 2015, the case has been examined by four boards of judges (and juries) in three different courts of the Poltava region (Kobelyatsky, Kiev district and Oktyabrsky district courts of Poltava). Each

change in the composition of the court means a completely new judicial investigation, which begins literally "from scratch", while the accused are kept in custody. The current situation may indicate the inability of local courts to consider this case within a reasonable time.

A. Melnik already applied for the change of jurisdiction of his criminal proceedings to a court located outside the territory of the Poltava region, explaining this by the presence of pressure on local courts by the regional authorities. Presence of such pressure may be indicated by the following facts:

1) The first deputy chairman of the Poltava Regional Council (Parliament) E. Kholod, who is a witness in the case of A. Melnik and others, was one of the initiators of the dismissal of judge O. Logvinova (with his participation, the Regional Council accepted an appeal to the Supreme Council of Justice on this issue) after she changed the measure of restraint for the accused from custody to house arrest. This incident may indicate the presence of local government interference in the authority of the judiciary;

2) In addition, at the session of the Regional Council E. Kholod publicly stated that A. Melnik is responsible for the murder, although he should be aware that there is no court decision in this case. Thus, a person acting in the process as a witness violates the presumption of innocence of A. Melnik, it can be qualified as an attempt to influence the public opinion and participants in the process.

3) The Minister of Internal Affairs of Ukraine A. Avakov and his adviser Z. Shkiryak demonstrated similar attitude

towards observance of the principle of presumption of innocence in this case. Even before A. Melnik's arrest in 2014, they publicly declared that he was responsible for the murder of the mayor of Kremenchug.

The appeal for transfer of jurisdiction of the case from the Poltava region was rejected, the case was transferred to the Oktyabrsky District Court of Poltava. In the course of the first session, the court returned the indictment to the prosecutor for the elimination of deficiencies. Time will tell whether this step will help to speed up the consideration of the case or further delay the process.

Monitoring of the trial of A. Melnik, A. Kryzhanovsky, I. Pasichny, I. Kunik (court hearing 10/26/2017)

On October 26, in Kharkov, a session of the court of appeal took place on the appeal of the prosecutor against the decision of the first instance court to return for revision the indictment on the case of the head of the television company "Vizit" Alexander Melnik, who is one of the accused (together with A. Kryzhanovskiy, I. Pasichnyi and I. Kunik) in the murder of the mayor of Kremenchug A. Babayev and the judge of the Kremenchug court A. Lobodenko.

Since the hearing took place in Kharkov, and the defendants are detained in Poltava (where the main trial takes place), the defendants took part in the session through videoconference. This progressive format of participation in the court hearing carries a significant risk when it comes to participation of defendants. Such participation of the accused can occur at the expense of

their procedural rights (all four cannot communicate freely with their defenders during the meeting and, in fact, are not full participants in the trial) since they are deprived of the opportunity to physically attend the meeting. ISHR experts already faced a similar situation in the case of A. Schegolev. The decisions of the European Court of Human Rights ("Sakhnovsky v. Russia") indicate that effective protection is impossible without observance of the right of the accused to confidently communicate with his counsel. The court did not decide on the appeal of the prosecutor (because the new lawyer of one of the defendants asked for extra time to get familiarized with the case). However, the court decided to consider another issue, so to say "taking the opportunity". The panel of judges considered the issue of continuing the detention of the accused in custody, despite the fact that Art. 199 of the Criminal Procedure Code states that an appeal for the extension of a measure of restraint in the form of detention is filed by the prosecutor (investigator) to the local court.

The very fact of considering the issue of choosing a measure of restraint by the court of appeal (whose task in this process is limited to the appeal of the prosecutor against the decision of the court of first instance to return the indictment for revision) raises a number of questions:

1) Did the principle of the territorial jurisdiction was violated, since the question of the measure of restraint was considered by the court of another region?

2) Did the parties had the opportunity to prepare for the consideration of this issue (according to the side of defense, they did not know that a decision on measure of restraint would be passed) and if not, how did the court obtain the information necessary to make such a decision?

Nevertheless, the court decided to leave all the accused in custody. Reasoning it with the fact that there are no circumstances that indicate the need to change the previously chosen measure of restraint. In fact, the court in its decision stated that it had not found any reasons for changing the measure of restraint, while according to Art. 183, 199 of the Code of Criminal Procedure, it is a duty of the prosecutor (investigator) to prove the necessity of extending this measure of restraint. ISHR experts note that such practice is contrary to the norms of the criminal proceedings. It is not for the court to state that there is no need for detention, and it is not for the defense to prove the reasons for changing the measure of restraint in such situation.

Monitoring of the trial of A. Melnik, A. Kryzhanovskiy, I. Pasichnyi, I. Kunik (court hearing of 11/16/2017)

On November 16, 2017, in Kharkov a session of the court of appeal took place on consideration of a claim by the prosecutor related to the decision by the court of the first instance to return the indictment in the case of Alexander Melnik, Head of “Vizit” TV company, who is one of the four (together with A. Kryzhanovskiy, I. Pasichnyi, I. Kunik) accused of the murder of A. Babayev, the mayor of

Kremenchug, and A. Lobodenko, the judge of the Kremenchug court.

As during the previous court hearing, the accused participated in the trial in the mode of a video conference (they are held in pre-trial detention centre in Poltava). ISHR experts repeatedly pointed out that such a format of participation by the accused could result in limitation of their procedural rights, since all four are deprived of the possibility to be physically present at the trial. Let us again draw the attention to the practice of the European court of human rights (the case “Sakhnovskiy v. Russia”), according to which the efficient defense is impossible without realization of the right of accused to confidentially communicate with his/her defender.

In the course of the trial the defense filed several petitions, among them a petition requesting a change of the measure of restraint and provision of in-patient medical treatment, envisaged by the law, for Aleksander Melnik who is suffering from chronic diseases (including hypertension). All petitions by the defense were either rejected or re-directed to other state authorities (including judicial authorities) as appropriate. It is noteworthy that the court of appeal had left the issue of in-patient medical treatment provision for Aleksander Melnik without consideration on the ground of the instance allegedly being inappropriate. Along with this, the issue of the instance being inappropriate did not prevent that very court from passing a decision to extend detention for the accused. There also appears an issue of challenging by the defense party of the decision to extend

the measure of restraint passed by the court of appeal of the Kharkov region, having gone beyond the limits of the appeal petition (decision dated 26.10.2017), having acted in fact as a court of the first instance.

There occurs a situation when a person suffering from a chronic disease cannot receive any adequate medical aid due to purely procedural reasons. A court of appeal, which is located in the other region, has passed a decision on the issue not included into the petition of appeal (to extend the term of detention) but has refused to consider the issue of the in-patient medical treatment provision which had arisen right after the decision to leave the accused in the pre-trial detention centre. The situation is aggravated by the statement of the prosecutor's office alleging that, according to law, in-patient medical treatment is provided to those who are indicted but not to the accused (whom Aleksander Melnik is at the moment). Now the defenders should either file the appeal against the decision on detention (while it is not clear where to appeal to), or address the Poltava-based courts requesting them to pass a decision on an in-patient medical treatment where they run a risk of being rejected due to the "inappropriate" procedural status of Aleksander Melnik. It will require time, but a person suffering from a chronic disease requires a quality medical aid constantly. What happened to consideration of procedural rights of A. Melnik, when the court of appeal had initiated those proceedings?

According to the previous decisions of the European Court of Human Rights, for instance, in the cases "Yakovenko v.

Ukraine" and "Lunyov v. Ukraine" the official authorities were assigned the responsibility to provide protection of health of those imprisoned.

The court of appeal has upheld the petition of the prosecution and ruled to start the trial from a preparatory court hearing. It must be noted that the trial of A. Melnik, A. Kryzhanovskiy, I. Pasichnyi, I. Kunik has been going on for about 3 years already (from the beginning of 2015), and now it will actually start "from the beginning".

This case has attracted attention of the OSCE monitoring mission whose representatives attended the court hearing.

MONITORING OF THE TRIAL OF EVGENY MEFEDOV

Monitoring of the trial of E. Mefedov (court hearings 10/11/2017 and 10/18/2017)

October 18, in Odessa, a court hearing took place on the case of a Russian citizen, an activist of the Odessa "Anti-Maidan" Yevgeniy Mefedov who participated in the events of May 2, 2014 in the Odessa Trade Union House. He is accused of attempts of a forced overthrow of the authorities and infringement on the territorial integrity of Ukraine. Experts of the International Society for Human Rights started to monitor this litigation.

E. Mefedov – one of the activists, who was in a burnt-out House of Trade Unions, where more than forty Maidan opponents were killed. In the course of studying the

materials of the judicial process, facts were revealed that make it possible to assert that the trial of E. Mefedov is being conducted with violation of the right to a fair trial.

Constant "renewal" of charges. The trial of E. Mefedov began in May 2014, during that time several charges were brought against him both relating to the events of May 2, 2014, and relating to the episodes that took place during the stay of the defendant in the pre-trial detention center. Among them, infringement on the territorial integrity of Ukraine, an attempt to overthrow the authorities, organization of mass riots, a threat of murder and use of obscene language in the courtroom. At the same time, each new charge appeared at the time when for the previous one the court decided to change the measure of restraint from custody to a softer one (a bail or house arrest).

"Permanent" detention in contravention of court decisions. During the trial, the court repeatedly changed the measure of restraint for E. Mefedov, however, the accused did not spend a single day at home. Implementation of decisions on changing of measure of restraint is permanently blocked by: a) the prosecutor's office, which promptly presents new charges; b) activists of Maidan who picketed the court and blocked the exit from the courtroom to the judges and participants of the trial until the judges changed their decision; c) SBU officers who detained E. Mefedov right in the courtroom, immediately after the court released him from custody. Among characteristic episodes there was a call with a message that the accused used obscene language in the courtroom, after which the court, having

just released E. Mefedov for house arrest, imposed an administrative arrest on him for two days. During this time, information was received that the accused threatened one of the Maidan activists with murder after his release from the pre-trial detention centre. This served as the reason for another change in the measure of restraint to E. Mefedov for detention, although no evidence of such threats had been provided to the court.

Pressure on the court and participants in the proceedings. During the trial activists of the "Maidan" repeatedly arranged actions both in front of the court building and in the courtroom, not all of them can be characterized as a peaceful protest. Thus, in November 2015, after the court decided to change the measure of restraint for the defendant to bail (which E. Mefedov's relatives already managed to make), those who disagreed with this decision blocked the judges in the courtroom and forced them to file applications on resignation from office. After that, the panel of judges cancelled its decision on changing the measure of restraint for E. Mefedov. In June 2017, activists attempted to attack V. Rybin, the lawyer of the accused.

The course of the last court hearings. On October 11, 2017, when the party of defense was expecting an acquittal, E. Mefedov was charged with organizing mass riots, the court again chose for the defendant an exceptional measure of restraint – detention. Due to the absence of the lawyer V. Rybin (according to the official version, he could not be contacted, although the lawyer claims that he did not receive any calls or other messages), at the time of the

session, the accused was assigned a public defender. The party of defense prepared an appeal against this decision and on October 18 the Odessa Regional Court of Appeal overturned the decision of the court of the first instance and sent the case for a new consideration, having recognized detention of E. Mefedov, performed on October 11, as illegal.

Monitoring of the trial of E. Mefedov (court hearings 11/06/2017 and 11/08/2017)

On November 6 and 8, court hearings of the court of appeal in the case of a Russian citizen, the activist of the Odessa "Anti-Maidan" Evgeniy Mefedov (who took part in the events of May 2, 2014 in the Odessa House of Trade Unions) were held in Odessa. He is accused of attempts of a forced overthrow of the authorities and infringement on the territorial integrity of Ukraine. During the hearings, the lawyer's appeal on the decision of the court of first instance about the detention of E. Mefedov was examined.

During the time spent in pre-trial detention center (since May 2014), E. Mefedov constantly faces new charges. Most often new charges are pressed just before the court must decide on releasing the defendant from custody. In October 2017 the court of first instance decided to leave the activist in jail, he was charged with a new suspicion. This time the accusation is not connected with the events in Odessa on May 2, 2014, but concerns an auto rally from Odessa to Nikolaev during the celebration of the 70th anniversary of the liberation of the city of Nikolaev from the Nazis (March 2014).

During the consideration of the appeal, the ISHR experts drew attention to the following facts that call into question the observance of the right to a fair trial in respect of E. Mefedov:

1) The new charge is identical to the previous charge against E. Mefedov. The same evidence are used, the same actions are incriminated, with the same qualification, but with different articles of the Criminal Code on which charges are brought. Even the text of the charges is identical. The prosecutor suggested that the investigators simply took the text of the previous charge from the Facebook page of the suspect's lawyer and rewrote it in a new charge.

Such an "extravagant" assumption of the prosecutor can certainly be voiced, but taking into account the situation in the trial of E. Mefedov, it is much more possible to assume that the prosecutor and the investigator tried to quickly prepare a new accusation against the activist before the court releases him from custody, and simply copied the text. If this assumption is the reason for the suspicious similarity of two different charges, this casts doubt on the objectivity and thorough study of the information during the preparation of the case.

2) During the consideration by the court of first instance of the issue on the election of measure of restraint for E. Mefedov, the lawyer of the defendant V. Rybin was not notified about the date of the court hearing. Due to the

absence of V. Rybin the public defender was quickly appointed by the court. All protests of the defendant were ignored.

This situation is a violation of the defendant's right to defense. E. Mefedov has a permanent defender who participates in all of his trials. Even the mentioned above appeal of the accused was performed by V. Rybin, and not by the public defender. ISHR experts suggest that the violation was completely purposeful, in order to deprive E. Mefedov of effective protection. Attorney Rybin lives in Kiev, and not in Odessa, so he does not have the opportunity to arrive promptly to the court to "clarify the situation", taking into account this circumstance, the court had to approach with special care the issue of notification of the lawyer. Moreover, the previous decisions of the European Court of Human Rights indicates that a person charged with a criminal offence who does not wish to defend himself in person must be able to have recourse to legal assistance of his own choosing (Hanzevatski v. Croatia).

3) The main evidence of proof of E. Mefedov's guilt is the video of the car rally and the ceremony of laying of flowers to the monument in Nikolaev. According to the prosecutor, such actions were aimed to unconstitutional change of the borders of Ukraine. During the court session on November 6, the prosecutor in every possible way tried to avoid examination of the actual video by the court, although the lawyer stated that what was happening on the video did

not correspond to the information stated in the official protocol (to the video).

At the court hearing on November 8, the video was demonstrated to the court. The duration of the whole video is about 22 minutes; E. Mefedov appears in the video for less than half a minute. From watching the video, it can be assumed that the accused could say the following: "Hooray! Hooray! Hooray!" and" One for all and all for one!" on the video these slogans are shouted by a group of people, it is not possible to establish what exactly E. Mefedov said. The court has yet to decide whether these statements are actions aimed at unconstitutional change of the borders of Ukraine.

During the court session it became clear that the author of this video was unidentified. The investigation got it from open sources (YouTube website). E. Mefedov is not accused of creation of this video.

The Court of Appeal decided to leave E. Mefedov in custody.

MONITORING OF THE TRIAL OF VASILY MURAVITSKY

Monitoring of the trial of V. Muravitsky (court hearing 10/24/2017)

On 24 October 2017 preliminary hearings were held on the case of journalist Vasily Muravitsky, accused of high treason and infringement on the territorial integrity of Ukraine through journalistic activity. International Society for Human Rights experts has begun to monitor the legal proceedings.

Criminal charge. The journalist is accused of crimes laid out in four articles of the Criminal Code: treason, infringement on territorial integrity, creating a terrorist organization, and violating the equality of citizens. According to information from the Security Service of Ukraine (SBU), Vasily Muravitsky has been cooperating with Russian state media since 2014 and, as it has been requested of him, has "created biased articles" and distributed "anti-Ukrainian materials". According to information released by the SBU in explanation of the need to detain the journalist, the websites where Muravitsky's articles were published were administered from Russia and from territories of Ukraine not under control of the state.

The defense says that the journalist's cooperation with Russian media was legal and that he received official compensation, paid taxes in Ukraine, and did not attempt to hide from the authorities or leave the territory of Ukraine. Cooperation with the Russian media in and of itself, according to his lawyer, is not a crime since a war has

not been declared between Ukraine and Russia, nor have diplomatic and other relations been broken. The defense's position is that Muravitsky cannot be accused of any kind of cooperation with terrorists (the accusation that arose in connection with the journalist's alleged connections to structures situated on the territory of Ukraine that is not under control of the authorities) because the Donetsk People's Republic and the Lugansk People's Republic are not recognized by the international community as terrorist organizations and the Supreme Court of Ukraine also acknowledged that they are not recognized as terrorist organizations in a letter dated 10/25/2016.

Arrest. Vasily Muravitsky was arrested on 2 August 2017. The arrest took place at a maternity hospital where the defendant was for the birth of his son. Considering the fact that the journalist did not attempt to hide from the authorities whilst he was cooperating with the Russian media, his arrest at the hospital can be seen as a demonstration directed at members of the journalistic community who have contact with the Russian media. The fact that he was taken into custody as his wife was giving birth can be seen as psychological pressure on the accused as well as on his family. After Muravitsky was arrested his lawyer was not allowed to see him for two days, which is a gross violation of procedural rights.

Court proceedings. Journalists and public activists (both supporters and opponents of Vasily Muravitsky) were in the courtroom at the proceedings on 24 October. The accused, seated in a box (often referred to as “the aquarium”) had the opportunity to speak with the press and with activists

present in the courtroom. On the sidelines of the hearing, it was possible to get acquainted with an impressive list of articles written by Muravitsky (including research material) in the presence of the head of the organization of journalists of the Zhitomir Region.

The defense filed a petition to change pre-trial restrictions (making reference to the Nelya Shtepa case) and to give the defendant the opportunity to be next to his lawyers during the trial. The court ordered Muravitsky to remain in custody and rejected the consideration of giving him the opportunity to be near his lawyers, justifying this decision by the fact that this is not an issue that is within the competence of the court. The International Society for Human Rights has stated many times that if someone who is accused does not have the ability to directly communicate with his lawyer throughout the entire court proceedings, he cannot be considered to be a full participant in the judicial process. ISHR experts also point out that in other cases (Vladimir Bik, Alexander Melnik) the court itself made the decision on this matter. That being said, the motivation of the court (in Muravitsky's case) does not provide a thorough explanation in its decision to refuse the defendant the opportunity to sit next to his lawyers.

MONITORING OF THE TRIAL OF MAKSIM NITSENKO

Monitoring of the trial of M. Nitsenko (court hearing 08/28/2017)

On August 28, in Izyum another hearing took place in the case of a minor Maksim Nitsenko, who is accused of preparing acts of sabotage (attempt to blow up a railway bridge in Kharkov region). ISHR experts have been following the development of this trial since March 2017. The material collected during the monitoring indicates the existence of certain trends that violate the right to a fair trial and other human rights.

1) The previous hearing in the case of M. Nitsenko took place two months ago (June 30, 2017), despite the fact that the legal investigation is going on for more than two years (the interval between court sessions can be several months; M. Nitsenko is in custody since the spring of 2015), at the last hearing the court only decided on the extension of the defendant's detention. The facts of the case where not considered because of the absence of witnesses of the prosecution. ISHR experts have noted that the systematic absence of witnesses of the prosecution prevents the completion of the trial within a reasonable time, thus violating the right of M. Nitsenko to a fair trial within a reasonable time.

2) During court session M. Nitsenko looked sick and lost a lot of weight, paid little attention to the proceedings. Given the fact that ISHR experts repeatedly communicated with defendant in the courtroom and visited him in jail, we can

say that the present state of M. Nitsenko is not typical and requires medical evaluation. ISHR will submit an appropriate request to Kharkov pre-trial detention center.

3) Lawyer of M. Nitsenko reported that in another area of the Kharkov region a similar case was considered. This case was re-qualified on the request of the prosecutor and the defendant was lawfully released from custody. Ukrainian section of the ISHR plans to prepare appeals to the regional and general prosecutor's office with a request to take into account this judicial precedent in the case of M. Nitsenko.

Monitoring of the trial of M. Nitsenko (court hearing 10/19/2017)

On October 19, 2017, in Izyum (Kharkov region), another trial was held on the case of an underage opponent of the Ukrainian authorities Maksim Nitsenko who is accused of preparing a diversion (an attempt to destroy a railway bridge in Kharkov region). The experts of the International Society for Human Rights have been monitoring this trial since March 2017.

In the course of the court hearing an issue of the preventive measure for the accused was considered (Maksim Nitsenko has been kept in the pre-trial detention centre for three years already). The court passed a ruling to continue keeping the accused in custody, despite the attempts of the lawyer to refer to the cases of Nellya Shtepa and Vladimir Bik (where the accused were transferred from pre-trial detention centers to house arrest). It must be noted that keeping in custody is an exclusive measure of restraint, and for it to be applied and

to be subsequently continued (every two months), the prosecutor's office must provide weighty arguments substantiating this very measure. But in the process of the court hearing the prosecutor was grounding the necessity of further keeping M. Nitsenko in the pre-trial detention centre in quite a passive way, while the defense was forced to substantiate the arguments in favor of a softer measure of restraint. This contradicts with the norms of the criminal process (articles 183, 184 Criminal Procedural Code), in fact, the parties have switched their roles, since it must be prosecution, not the defense, who shall substantiate the necessity of an exclusive measure of restraint be applied. Regrettably, such a situation is typical for the Ukrainian justice, in a number of cases ISHR experts came across such a violation of the procedural rights resulting in violation of the right to a personal freedom.

Yet another "usual" problem of this trial is the failure to appear before court by a "legendary witness" I. Petrov whose evidence in many instances is used by the prosecution for accusation. The prosecutor informed the court that the witness was somewhere in the zone of the antiterrorist operation in the east of the country (ATO) and could not be contacted for the moment. Failures to appear on the part of I. Petrov are regular and they delay the process significantly, but the court again made a general statement on the necessity of contacting the witness, and the prosecutor, as usual, ensured the court that he would do everything possible to contact him. It must not be forgotten that reluctance to create discomfort for I. Petrov which is, however, stipulated by the procedural legislation

(for example, to apply an enforced appearance to him stipulated by articles 139, 140 of the Criminal Procedural Code) results in delaying the whole process and continued custody of Maksim Nitsenko. As a result, unwillingness to disturb one person brings limitations of fundamental rights of another one. Moreover, the decisions of the European Court of Human Rights shows that a lack of possibility for the party of defense to interrogate a key witness constitutes a violation of article 6 of Convention for the Protection of Human Rights and Fundamental Freedoms (case of "Yevgeniy Ivanov v. Russia").

In the process of the court hearing a transcript of the conversation between I. Petrov and M. Nitsenko discussing the attempt of destroying a bridge was examined. Based on everything said by I. Petrov, it can be concluded that he, being aware of the audio recording, was provoking M. Nitsenko by asking questions in a way which later could be used against the latter in court. It was I. Petrov who claimed he would provide everything required to prepare the blast (explosives etc.). The court also considered the materials provided by the Security Service of Ukraine (SBU) describing preparation of explosives dummies (how, when and who of the SBU staff prepared them). The evidence considered in the trial indicates that Maksim Nitsenko was a victim of a special operation performed by SBU, on the part of the secret service, there had been provoking of the accused to commit unlawful actions. It is important to clarify that the practice of the European Court of Human Rights indicates that the evidence obtained with the help of a provocation cannot be used in court (casec of

"Ramanauskas v. Lithuania", "Veselov and others v. Russia").

Monitoring of the criminal case against Maksim Nitsenko (exchange process)

In the course of the exchange of prisoners between Ukrainian authorities and representatives of the ORDLO (eastern regions of Ukraine) held in late December 2017, Ukrainian citizen Maksim Nitsenko, who was arrested in 2015, was included in the exchange process. ISHR experts monitored the trial of M. Nitsenko since the spring of 2017.

On December 18, the court decided to release M. Nitsenko from custody and put him under house arrest. The defendant was sent to the special facility for prisoners of armed conflict which was organized by the Security Service of Ukraine in Kharkov. He was exchanged on December 27. According to our information M. Nitsenko is in the hospital in Donetsk. Detailed information about the criminal case of M. Nitsenko can be found in the previous reports prepared by ISHR experts.

Certainly, the exchange of prisoners as an execution of one of the articles of the Minsk Agreements plays an important positive role in the process of conflict resolution. However, the very release of defendants due to the process of exchange of prisoners, and not in accordance with the rules of the criminal law, requires a close consideration. Persons subject to exchange were accused of high treason, attempted sabotage, etc. These are crimes punishable by criminal law; however, the mere fact of including such

defendants on lists for the exchange of prisoners actually transfers them under the jurisdiction of humanitarian law. These changes create a certain legal conflict, since the majority of the persons who were subject to the exchange were released not as a result of a court decision, but due to a political decision to exchange prisoners.

Does this mean that lengthy trials were just a part of a major "political" process (the capture of opponents (or enemies) by the sides of the conflict) or a political decision interrupted the trial at the last moment? In any case, the principle of the rule of law and the independence of the judiciary in Ukraine where jeopardized. As a result, accusations of political motivation in the legal proceedings connected to the situation in the east of Ukraine have been confirmed.

In total, during the exchange, the Ukrainian authorities released more than two hundred people. The proceedings known to ISHR were initially qualified as criminal, but the fact of the prisoner exchange, de facto, transferred them to the category of "the right to conduct war" which puts the judicial system of Ukraine in a difficult situation. It remains unclear why all these persons were not initially treated as prisoners of war (with the legal effects that are due to such a status), especially since representatives of the Ukrainian authorities, including the President, consider the situation in the east of the country as a state of war.

MONITORING OF THE TRIAL OF ALEKSANDER SCHEGOLEV

Monitoring of the trial of A. Schegolev (court hearing 10/10/2017)

On October 10, another hearing was held on the case of former head of the Main Directorate of the Security Service (SBU) in Kiev and the Kiev region Aleksander Schegolev, who is accused of leading the anti-terrorist operation headquarters against the supporters of the Maidan (winter 2013-2014). Experts of the International Society for Human Rights have begun monitoring this litigation.

The charge. General Schegolev is accused of organizing assaults on buildings and squares controlled by Maidan activists in the center of Kiev, which led to numerous casualties among protesters and security officials. According to the accusation, A. Schegolev supervised the actions of the Security Service special units, police officers and internal troops of the Ministry of Internal Affairs exceeded his official powers with the aim of illegally impeding holding rallies, and committing intentional murders.

The defendant does not admit his guilt, according to General Schegolev, he did not have the opportunity to lead the Interior Ministry and internal troops, as these units were not part of the SBU department. In addition, as a military man, he cannot be prosecuted under the articles provided for punishing unlawful acts of civilians (such as Article 340 of the Criminal Code of Ukraine – an illegal impediment to holding rallies).

Terms of litigation. A. Schegolev has been in jail for more than two years (since August 2015), out of this period court proceedings account for less than a year. After the arrest, the accused initially expected transfer of the case to the court (until February 2016), and then the completion of the indictment (the court repeatedly returned the indictment to the prosecutor) which practically took the entire year 2016 (until December 2016). As a result, most of the time spent in custody, General Schegolev was waiting for the start of the trial. This situation goes beyond compliance with the principle of conducting a trial within a reasonable time. In A. Shchegolev's case, the "trial", in the context in question, should be interpreted as the entire range of actions aimed at issuing an acquittal or conviction from the moment of the suspect's arrest and until the final judicial ruling.

The course of the court hearing. At the trial on October 10, 2017 (as well as at most previous trials) A. Schegolev was not personally present in the courtroom. Because earlier in February 2016 both he and his lawyer had been attacked in the courtroom (were sluiced over with brilliant green). To protect the accused, the court decided to continue his participation in the process in the videoconference mode (from the pre-trial detention centre). Thus, protection of the accused is being done via curtailing his procedural rights (General Schegolev cannot communicate with his defenders during the trial and, in fact, is not a full-fledged participant in the process). It is worth noting that in another case, against the SBU General V. Bik (whose monitoring is also being carried out by ISHR experts), there is a court ruling allowing the accused to be present

together with defenders during the court session, i.e. unlike his colleague, not only A. Schegolev did not get any opportunity to be present during the trial together with his defenders, but also he was deprived of the opportunity to physically attend the trial . It remains unclear why the court cannot ensure safety of the accused without limiting his procedural rights?

During the trial, representatives of public who were present in the courtroom repeatedly shouted insults addressed to lawyers of A. Schegolev, calling them "separatists", "agents of Putin", etc. while the court did not react to such actions of those present until the defenders addressed the court with a request to influence the activists. Such a behavior can be regarded as exercising pressure on defense, the lawyers exercise their legitimate powers to represent the interests of the accused in a lawsuit. They are not his "accomplices", and must not be identified with their client (Article 23 of the Law "On the Bar and Advocacy").

Monitoring of the trial of A. Schegolev (court hearing 11/13/2017)

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

During the hearing, the court considered the issue of choosing a measure of restraint for the defendant (A. Schegolev was detained since August 2015). The court decided to leave General Schegolev in custody. In most cases, which are monitored by ISHR experts, the defendants are kept in detention for years, waiting for the final verdict of the court (for example, in the case of A. Schegolev, evaluation of the indictment by judges took half a year). The excessive length of trials in Ukraine is one of the most "popular" topics among the complaints to the European Court of Human Rights (ECtHR) by Ukrainian citizens. The lawyer of the suspect K. Legkikh drew the court's attention to several decisions of the ECtHR (in the cases of “Kharchenko v. Ukraine”, “Eloev v. Ukraine”, “Belchev v. Bulgaria”), which were used by the court, during the decision to change the measure of restraint from detention to house arrest in a similar case against General V. Bik. In these litigations, the ECtHR points out to the need for provision of convincing grounds (given by state bodies in each case) to apply an exceptional measure of restraint, such as detention.

The course of the court session. As always A. Schegolev took part in the court session through videoconference. ISHR experts have already noted that such format of participation carries significant risks when it comes to defendants, because such participation of the accused can lead to hampering of his procedural rights. General Schegolev cannot communicate freely with his defenders during the hearing and due to this fact cannot be considered a full participant in the process. Previous decisions of the European Court of Human Rights (case of

"Sakhnovsky v. Russia") indicate that effective defense of the accused is impossible without the observance of the right of the defendant to confidentially communicate with his counsel. In the case of A. Schegolev, both of his lawyers are in the courtroom, while the defendant is watching the trial from the pre-trial detention center. Such conditions complicate effective protection; prevent observance of the adversarial principle and equality of parties in the judicial process.

During the court session it was clarified that one of the main evidence against A. Schegolev, so called "combat disposition" a document (which, according to the prosecutor, was signed by A. Schegolev) which ordered riot police to storm the Kiev Trade Union House (occupied at the time by the protesters), is absent among the evidence of the case. Lawyer V. Rybin even doubted its existence, because for the entire length of the trial, this document was not investigated in court. ISHR experts have repeatedly observed similar situations, when prosecutors or the court would "withhold" materials of great importance to the process. For example, in the case of E. Mefedov, where the prosecution in every possible way prevented an open examination of the main evidence in court (a video with the participation of the defendant) or in the case of D. Mastikasheva, when the court refused to examine certain evidence (video of interrogation of the accused) in the presence of the parties. In the cases of "Velké and Bialik v. Poland" and "Jasper v. The United Kingdom", the ECtHR clearly indicated that the prosecution authorities are required to present to the defense all the material evidence at their disposal. Thus, the refusal of the prosecutor's office

to give the defense the opportunity to get acquainted with one of the main evidence in the case of A. Schegolev is a violation of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

MONITORING OF THE TRIAL OF VIKTOR YANUKOVYCH

Monitoring of the trial of V. Yanukovych (court hearing 05/04/2017)

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

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

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

case, Viktor Yanukovych has already participated in the court session through videoconference.

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

Monitoring of the trial of V. Yanukovych (court hearing 05/18/2017)

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

1) The international norms ratified by Ukraine, which regulate the procedure of legal proceedings, in a situation when one of the participants is abroad, require cooperation with the state bodies of the country where such participant is located. In the case of V. Yanukovych it isthe government officials of the Russian Federation. Despite the willingness of Russian authorities to cooperate (which is proven by the official documents), the Ukrainian court refused to use this mechanism. This decision is motivated by the fact that Viktor Yanukovych is accused of high treason in favor of the Russian Federation. However, the court did not refer to any rules of international or national law that allows it to act in such a way. This creates a precedent for deviation from

international norms and creates a situation in which the trial is made dependent on the current political situation.

2) Despite the allegations that there is no interference with the automated system of distribution of judges, the ability of the Prosecutor General to "guess" the names of all members of the panel of judges in a particular case and make a public statement about it may negatively affect both the psychological state of judges and the level of confidence in the system of automated distribution on the part of the society.

3) Prosecutors made statements in an emotional tone and, despite the fact that the case had not yet begun to be considered by the court, Viktor Yanukovych was accused of "having brought the war, contributed to the annexation of the Crimea, surrendered part of the Donetsk and Lugansk regions, the Ukrainian people received millions of refugees, tears of mothers, injuries and thousands of crosses in cemeteries ... ". Of course, the case against the ex-president cannot completely avoid emotional and political coloring, however, going beyond the strictly procedural framework threatens to increase negative trends in the society, calls into question the impartiality of state authorities and their representatives. Important proceedings, with a political component (such as the Yanukovych case) can have positive consequences only if they contribute to the establishment of a compromise and mutual understanding in society.

Monitoring of the trial of V. Yanukovych (court hearings 07/06/2017 and 07/12/2017)

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

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

The court decided to appoint V. Yanukovych a public defense. In a week the issue was resolved and at the next court session on July 12 the defense was represented by lawyer V. Meshechek. New lawyer stated that he considers the public statement made by the prosecutors that the defense could get acquainted with the case by studying about 1000 pages per day as pressure, and asked for at least a month to read and analyze the case (about 5250 pages). The court appointed the next session on August 3, giving the new lawyer twenty-one days to get acquainted with the case. Thus, in order to get acquainted with all the

relevant information, a new defender should study about 250 pages per day, without days off.

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

As it became known from open sources, lawyers of V. Yanukovych are preparing a complaint to the European Court of Human Rights for violation of the right to access to justice.

Monitoring of the trial of V. Yanukovych (court hearing 09/21/2017)

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

The court. The court rejected all of defense motions (14 appeals) including: a repeated request to allow more time for familiarization with the case prior to the legal investigation; petition to summon V. Yanukovych to the court hearing via rules of international legislation ratified by Ukraine; petitions for dismissal of the judges. The court continues to insist that defense had enough time to get acquainted with the case and, if necessary, can prepare for a each hearing (having studied only the necessary part of the case) without getting acquainted with the whole case.

ISHR experts monitor this proceeding for almost five months (since the beginning of the hearings), for the last three months the interests of V. Yanukovych are represented by public defenders. During this time, the court constantly denied the defenders (both current and previous) the provision of sufficient (in the opinion of the defenders) time to get acquainted with the case, arguing that such actions will delay the trial. However, the entire course of the proceeding indicates that such decision of the court actually delay the trial, as it forces public defenders to either withdraw (which leads to the need to appoint a new public defender and give him time to familiarize himself with the case), or to submit endless petitions about the postponement of the next hearing in order to gain time for studying the case.

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

ISHR experts have already encountered similar judicial practice in the case of ex-head of the counterintelligence department of Ukrainian Secret Service V. Bik (he is also accused of high treason). Prosecutors in this process show the court parts of videos (which are in public access) and

suggest that the court draw conclusions based on this video clips. Of course, such an approach hinders the full study of the case and calls into question the possibility of a fair judicial decision.

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

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

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

Monitoring of the trial of V. Yanukovych (court hearings from 09/28/2017 to 10/19/2017)

Between September 28 and October 19, four hearings were held on the case of former Ukrainian President Viktor Yanukovych who is accused of high treason. According to the experts of the International Society for Human Rights the defense does not actually participate in the process, which contradicts the principle of adversarial proceedings in court.

M. Gerasko, the public defender of V. Yanukovych, appealed to court to postpone the trial to allow him to meet with the accused. The court granted him the opportunity, the lawyer left for Rostov (the residence of V. Yanukovych) between September 29 and October 18 (the meetings appointed for this period, were postponed). At

the meeting on October 19, M. Gerasko stated that he had failed to meet with V. Yanukovych and he could not fully participate in the process until he agreed his position with the client. Which leads to the following:

1) While reviewing the evidence of the prosecution (watching videos), the lawyer is not actually involved in the process, saying that he cannot comment on the video until he meets with V. Yanukovych.

2) All petitions of M. Gerasko relate to: requests to postpone the trial until his meeting with the client; to stop the hearing due to the end of the working day; requests to stop the hearing for lunch break, etc. while the court has started to consider the case (examining the evidence of the prosecutor's office). Such a situation does not correspond to the principle of equality of sides in court; in fact, the defense basically withdrew from the proceedings and did not have the opportunity to fully represent V. Yanukovych.

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

Monitoring of the trial of V. Yanukovich (court hearings 10/25/2017 and 10/26/2017)

On October 25 and 26, 2017, court hearings were held on the case of a high treason of ex-President of Ukraine Victor

Yanukovich. In the process of those hearings the court excluded a public defender Maksim Gerasko from participation. Igor Lyashenko was appointed as a new state defender.

The situation with a repeated change of public defenders shows the inability to provide for representation of the accused in court involving state-appointed lawyers. Position of the defender who stated he could not start consideration of the case in court until he familiarized himself with the case served as the reason for exclusion. Upon deliberations, the court ruled to change a lawyer. This is the second time when a public defender leaves the trial, in both cases the actual reason for such a decision was a refusal by the court to provide sufficient time (as seen by defenders) for lawyers to get prepared for the case (such as consideration of all the materials of the case and meeting with the client).

According to the legislation, the duty of lawyers is not limited to creating a visibility of equality in rights and presence of two parties at court hearings. First of all it is the actions on carrying out defense, representation and provision of other types of legal help to a client (article 1 of the Law of Ukraine “On Advocacy and Advocate Activity”). Paragraph of the Standards of provision of a free secondary legal help stipulates that, upon receipt of an order from a Centre of Free Secondary Legal Help, a lawyer shall familiarize himself, within a reasonable time defined by the law, with the materials of criminal proceedings, conduct a confidential meeting with a client during which he receives

from a client the information that have legal significance, and agrees upon a legal position with a client. Taking into account the fact that a lawyer is expressly not allowed by the law to use his rights against the interests of a client and take a position in court contrary to his will (article 21 of the Law of Ukraine “On Advocacy and Advocate Activity”), the attempts by Maksim Gerasko to set up communication with the client was not his right but the obligation. The Code of Advocate Ethics stipulates that when performing his activity, the advocate must focus on the interests of a client, be competent and conscientious (articles 8, 11). Therefore, the refusal to examine petitions of both Vitaly Meshechek and Maksim Gerasko on requesting to grant enough time for a full familiarization with the case of such a complexity and a wide publicity, constitutes a violation of the adversarial principle and a principle of equality in court, as well as a violation of the right to defense.

ISHR experts have noted more than once that in the case of Victor Yanukovich, a full-fledged representation of interests of the accused involving public defenders is impossible. The defenders attracted in such a way cannot coordinate their position with a client or are unable to perform a quality familiarization with the case, and are forced to state their recusal or take a position where their participation in the process would be limited to demands on requesting a sufficient time for familiarization with the case and the attempts to meet with a client.

The first public defender realized he would not be able to perform his obligations in a quality manner within a limited

time and stated his recusal. In the situation with Maksim Gerasko the court has pointed that the latter is incompetent, because of his refusal to comment on the evidence of the prosecution, without having examined the materials in full; refusal to work overtime filing applications on lunch breaks and impossibility to work overtime. ISHR experts become concerned with a possible pressure exercised on the part of the panel of judges in respect of a future public defender of Victor Yanukovich, by the way of creating a precedent of a change of a defender based on personal considerations of judges.

The court makes an attempt to promptly solve a problem related to the absence of a defender for Victor Yanukovich in the process. Within less than a day, the panel of judges sent a request to the Centre of Free Secondary Legal Help and a new lawyer, Igor Lyashenko, was appointed. He has requested two months for familiarization with the case. However, for this new third defender appointed by the state (and the fourth one in the trial), the time for familiarization with the materials has also been cut by the court; he was granted only a month and one week.

As the result, the position taken by the court – limitation of defenders in time provided for familiarization with the case in order not to delay the process, brings the opposite results. More than three months have passed from the moment public defenders started participating in the process. During this time, third in a row defender has been appointed, while the process is again put on hold, because a new lawyer required time for familiarization with the

case. The period between the first participation of the state defender Vitaly Meshechek and the start of hearings involving Igor Lyashenko will comprise almost five months. In the past, it has already resulted in defenders exiting from the process twice.

Monitoring of the trial of V. Yanukovych (court hearings from 12/04/2017 to 12/11/2017)

On December 4, a court hearing was held in the trial of former Ukrainian President Viktor Yanukovych, accused of high treason. A new public defender of the ex-president, I. Lyashenko, took part in the hearings.

In contrast to his predecessors, I. Lyashenko joined the trial without requiring additional time (more than was provided by the court) to familiarize himself with the case and did not requested time to establishing contact with his client. The state attorney limited himself to sending a letter to V. Yanukovich with a proposal to discuss the legal position in court and proceeded (together with the court and the prosecutor's office) to examine the evidence of the prosecution. I.Lyashenko also did not insist on V. Yanukovych's participation in the process in the format of a videoconference conducted according to the norms of international law (with an official appeal to the state bodies of Russia), which the previous lawyers of the ex-president demanded.

However, at a hearing on December 11, V. Yanukovych brought back his legal representatives, the law firm Aver Lex. Public defender I. Lyashenko appealed to the court

with a request to give him the opportunity to leave the hearing, since according to the Criminal Procedure Code and the Law of Ukraine "On the provision of free secondary legal aid", in the current situation, he no longer had to represent the interests of the ex-president. The court refused to satisfy the appeal of the lawyer, referring to the fact that it was up to the Center for Free Secondary Legal Help to decide to withdraw the public defender. It is worth noting that such a position of the court may contradict the practice of the European Court of Human Rights (ECtHR). In the “Hanzevatski v. Croatia” case, the ECtHR noted that a person accused of a criminal offense should be able to resort to legal assistance of his choice. Thus, the refusal to dismiss the state lawyer I. Lyashenko as a defender of V. Yanukovich (after the official return of the lawyers of Aver Lex) can be interpreted as an attempt to impose a specific defender, especially since the representatives of the prosecutor's office opposed the dismissal of I. Lyashenko, fearing that the official lawyers of the ex-president can be recalled by their client again, which would hamper the "pace" of the proceedings which the prosecution is comfortable with.

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

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

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

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

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

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In addition to Viktor Yanukovych's charge on high treason, in autumn of 2017 began the proceedings in which the former president was accused of crimes against protesters of the Maidan in the winter of 2013-2014.

"Maidan case" monitoring of the trial of V. Yanukovych

In November 2017, the Pechersk District Court of Kiev initiated a pre-trial examination of the so-called "Maidan Cause", a criminal case in which former Ukrainian President

Viktor Yanukovych is accused of crimes against protesters of the Maidan in the winter of 2013-2014. Experts of the International Society for Human Rights began monitoring of this litigation.

In the course of studying the case and attending court hearings, the following information, which is important in regard to observance of the right to a fair trial, was collected:

1) V. Yanukovych officially announced his desire to participate in the pre-trial consideration of the case (in the videoconference mode), but his appeal was rejected. Attempts to take part in various processes in this way were made by the ex-president many times. At the moment V. Yanukovich managed to appear only in one legal proceeding: the case against the servicemen of the riot police unit “Berkut” who participated in the events on the Maidan square. In this process, V. Yanukovych appears as a witness. Thus, despite the existence of international agreements (providing for the possibility of organizing a videoconference with a participant in the process who is being abroad), the Ukrainian court again refused to allow the ex-president to take part in the proceedings against him, allowing such a format of participation only in cases where he is a witness.

2) V. Yanukovych's defense appealed to the court and representatives of the Council of Europe with a request to ensure the monitoring of the trial by Council of Europe. Motivating this request by the agreements of 21.02.2014 between V. Yanukovych and the heads of the Foreign

Ministries of Germany, France and Poland according to which the investigations of acts of violence that took place during the confrontation on the Maidan will be held under the supervision of the Council of Europe. At the moment, the investigating judge denied the lawyers appeal. Representatives of the Council of Europe did not give a formal response.

3) Testimonies of key witnesses of the prosecution, such as A. Yatsenyuk, V. Klitschko, etc. are presented only in the mode of video recording of their interrogation by representatives of the prosecutor's office. When questioned by ISHR representative when the study of similar videotapes with questioning of these witnesses by the defense can be expected, lawyers of V. Yanukovych stated that this is not possible (these witnesses ignore contacts with the defense), and representatives of the prosecutor's office informed, that the defense has the right to appeal to witnesses with a request to receive written statements.

4) The prosecutor's office takes actions to restrict the access of the public and the media to information about the "Maidan case" (for example, to testimonies of key witnesses among the leaders of the Maidan who are currently in power). According to defense, representatives of the prosecutor's office threatened them with criminal liability for the dissemination of information received by the defense during the trial. Moreover, on November 16, 2017, after watching the video with interrogation of G. Moskal (one of the leaders of the Maidan who currently holds the post of head of the Transcarpathian region),

where he reported information contrary to the official interpretation of the events on the Maidan, the prosecutor's office demanded to hold the following hearings behind closed doors (without the admission of journalists and the public). The judge satisfied the claim of the prosecution.

The abovementioned facts suggest that in the pre-trial investigation of the "Maidan case", the representatives of the court and the prosecutor's office in every way restrict the factor of "publicity" of this trial, which bear significance for the society and the international community. The refusal to allow Viktor Yanukovych the opportunity to speak, the pressure on lawyers, the holding of closed sessions, the denial of the presence of a monitoring group of the Council of Europe, and the prevention of defense to interrogate key witnesses all indicate an attempt to conduct the process "in a fast and quiet way". ISHR experts have already noted that cases of such "scale" that have important social and political significance can have a positive effect for society only with maximum transparency and with the public involvement of all key participants in the tragic events of the winter of 2013-2014.

From the point of view of observance of the right to a fair trial, already at the stage of pre-trial investigation of this case, there were some actions that could lead to a violation of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. So in the question of joining the testimony of witnesses made in the form of video recording of interrogation by the prosecution, the rights of defense were not taken into

account. Namely, the right of defense (and the defendant) to have an adequate opportunity to interrogate such witnesses (the case of the European Court of Human Rights (ECtHR) “Schatschaschwili v. Germany”). Moreover, in the case of “Al-Khawaja and Tahery v. The United Kingdom”, the ECtHR stressed that, as a rule, witnesses should testify during the trial, all reasonable efforts should be made to ensure their presence. When witnesses do not take part in the giving of direct evidence, there is a duty to find out whether their absence is justified. Whether these violations will be eliminated during the trial, is yet to be seen.

ECtHR CASES USED IN THE REPORT

CASE OF A. AND OTHERS v. THE UNITED KINGDOM *(Application no. 3455/05)*

CASE OF AL-KHAWAJA AND TAHERY v. THE UNITED KINGDOM *(Applications nos. 26766/05 and 22228/06)*

CASE OF BATALINY v. RUSSIA *(Application no. 10060/07)*

CASE OF ELCI AND OTHERS v. TURKEY *(Applications nos. 23145/93 and 25091/94)*

CASE OF GORSHKOV v. UKRAINE *(Application no. 67531/01)*

CASE OF HANŽEVAČKI v. CROATIA *(Application no. 17182/07)*

CASE OF JASPER v. THE UNITED KINGDOM (Application no. 27052/95)

CASE OF KHARCHENKO v. UKRAINE *(Application no. 40107/02)*

CASE OF KINSKÝ v. THE CZECH REPUBLIC (A*pplication no. 42856/06)*

CASE OF KOLESNICHENKO v. RUSSIA *(Application no. 19856/04)*

CASE OF SAKHNOVSKIY v. RUSSIA *(Application no. 21272/03)*

CASE OF SCHATSCHASCHWILI v. GERMANY *(Application no. 9154/10)*

CASE OF SHCHEBET v. RUSSIA *(Application no. 16074/07)*

CASE OF SOLAKOV v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA (*Application no. 47023/99*)

CASE OF SOVTRANSAVTO HOLDING v. UKRAINE *(Application no. 48553/99)*

CASE OF WELKE AND BIAŁEK v. POLAND *(Application no. 15924/05)*

CONTACT INFORMATION

International Society for Human Rights

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

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

Editor Anton Alekseyev