

# IN SEARCH OF JUSTICE



**INVESTIGATION OF CRIMES RELATED  
TO VIOLATION OF THE RIGHT TO LIFE,  
THE RIGHT TO FREEDOM  
AND PERSONAL INVIOABILITY,  
FREEDOM FROM TORTURE,  
committed in the area of ATO: the shortcomings  
of the investigation performance and recommendations  
of the human rights activists**

The report is prepared by the Center for Civil Liberties under the auspices  
of the Coalition of Public Organizations and Initiatives "Justice for Peace in Donbas"



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# INTRODUCTION

In public space one can often hear the assertion that the so-called “liberated territory” (*areas of Donetsk and Luhansk Oblasts which in summer 2014 Ukraine returned under its control*), will be “a showcase of Ukraine”.

Partly these claims are justified: in the case of, for example, city of Sloviansk, which now experiences quite active formation and expansion of civil society bodies and heightened interest in connection with its emblematic stand in the context of the events of 2014–2015; or when it comes to mechanical comparison of territories occupied by illegal armed groups and the areas of Donbas controlled by the Ukrainian government.

However, we must honestly admit that so far Ukrainian Donbas “showcase” is not too attractive. Also due to instances of impunity for those who committed crimes during the occupation of the region by illegal armed groups, as well as during the time of its being already under the control of Ukraine.

In the resolution of the Parliamentary Assembly of the Council of Europe no. 2112 of April 2016, it is stated that “the Assembly with deep concern notes the messages about cases of violations of the right to freedom and the right to a fair trial of those who were detained by the Ukrainian special services or other Ukrainian military battalions, including the volunteer ones. We urge the Ukrainian authorities to investigate all such cases and punish the perpetrators according to the Ukrainian legislation”. The Assembly also notes the need to effectively investigate all cases of gross violations of human rights, regardless of their performers, “to conduct an effective investigation and criminal prosecution of all offenders in cases of

abduction and taking prisoner, as well as to investigate cases of extortion, bribery and corruption, related to the release of captives”<sup>1</sup>.

Impunity has been and remains one of the key issues in the functioning of the legal system of Ukraine, as well as shortcomings of compliance with the requirement for transparency, independence, thoroughness, and other criteria for the effective investigation of cases of violations of fundamental human rights. It is recognized in a number of decisions of the European Court of Human Rights, what was repeatedly stated by the authoritative international intergovernmental organizations, directly pointing to “a widespread sense of impunity” among the representatives of law enforcement bodies of Ukraine. It is, above all, about practicing tortures and ill treatment with regard to detainees at the level of district police precincts. In this context, it is appropriate to recall also a number of high-profile assassinations of political and public figures, journalists, which were never properly investigated, and the offenders (*except for a few ones*) still go unpunished.

National Strategy for Human Rights, last year approved by the President of Ukraine, recognizes ineffective investigation into cases of people’s deaths as a systemic problem<sup>2</sup>. This Strategy also noted the lack of effective investigations of crimes involving torture and ill-treatment of detainees, as well as cases of enforced disappearances (*abductions, seizure as hostages*). Ensuring appropriate arrangements for the effective investigation of the violations of the human rights to life, freedom and personal inviolability, as well as protection from torture, was defined as a strategic goal.

Definitely, after the Maidan events 2013–2014, Ukraine faced the issue of impunity and proper investigations in a new way. Currently, the amount of material on various offense episodes during the Maidan events, according to representatives of the victims, contains over 3,000 volumes. The Ukrainian law enforcement system for the first time faced with a large number of crimes that have been committed within the framework of a large-scale and systematic offensive of the government, with the mass deaths of the victims, many victims of violence and a considerable number of unidentified perpetrators.

On the background of unfolding events of the Russia’s “hybrid war” against Ukraine (*2014–2015*) the problem of investigations and impunity has all the more worsened. The amount of offenses committed during the Russia’s annexation of Crimea, and especially with the de facto occupation of the individual areas of Donetsk and Luhansk Oblasts by Russia together with created and supported by it illegal armed groups (*separatists*), is unprecedented for Ukraine.

As is well known, officially Anti-Terrorist Operation (*hereinafter referred to as ATO*) in the East of Ukraine began April 14, 2014. At the same time, the facts of abduction and torture of a significant number of persons in the area were reported since March of that year, since the start of the brutal attacks on pro-Ukrainian rallies under the conditions of mainly inactivity of local law enforcement bodies. Since May 2014, the armed clashes in Donbas with greater or lesser intensity do not stop up to now.

As with any armed conflict, this one is characterized by the violation of the

1 [www.eurointegration.com.ua/rus/news/2016/04/21/7048214/](http://www.eurointegration.com.ua/rus/news/2016/04/21/7048214/)

2 [www.zakon3.rada.gov.ua/laws/show/501/2015#n15](http://www.zakon3.rada.gov.ua/laws/show/501/2015#n15)

rights of civilian population, in particular, the rights to life, health, personal inviolability and freedom. These facts have been repeatedly addressed in the reports of both Ukrainian and international human rights organizations. In particular, Center for Civil Liberties in the joint report with the International Federation for Human Rights (FIDH)<sup>3</sup> noted that violations of rights of civilian population in Eastern Ukraine constitute both crimes against humanity and, sometimes, war crimes. And this means, among other things, that the investigating units of the National Police of Ukraine (NPU), the Security Service of Ukraine (SBU) and the General Prosecutor's Office of Ukraine (GPU) have to deal with the category of crimes with which they did not deal before these events. The situation complicates the legal controversies caused by the lack of consistent assessment of the events in Donbas as an armed conflict and consistent recognition of all legal consequences of this fact.

One of the indicators of lack of efficiency in conducting investigations in the ATO zone may be the fact that the European Court of Human Rights have begun to receive complaints about crimes of the Ukrainian ATO forces, which claim that the State of Ukraine does not provide effective investigations of the facts of abduction, torture and murder of civilians (e.g. *The Mikhaylov and Others vs. Ukraine Complaint, No. 60522/15*)<sup>4</sup>.

However, the European Court of Human Rights is likely to have to consider complaints against Ukraine, associated not only with the offenses on the part of the ATO forces.

Although the occupied areas are unavailable for the Ukrainian law enforcement bodies and the judiciary (however, the crimes committed there are also registered

by the Ukrainian law enforcement bodies), further on, the international court bodies theoretically could hold Ukraine liable for human rights violations in the armed insurgents controlled areas, which de jure are under the jurisdiction of the State. In particular, in the part of failing to provide necessary actions for the protection of persons, i.e. as for the positive obligations of the country – as it was in the case of a decision of the European Court of Human Rights in the “Ilashku and Others vs. Moldova and Russia” Case (No. 48787/99)<sup>5</sup>. It is about the case of a person illegally detained and sentenced, who was kept on the territory of Transnistria. Although the Court acknowledged that “the territory of Transnistria was actually under the control of Russia due to the hosted there its military detachments and military equipment, as well as its support provided to the “separatists”, “Moldova should be held liable for the specified violations because it had not taken adequate action to stop violations of human rights”.

Even given the fact that in the case of Ukraine, the Verkhovna Rada approved a resolution with a statement on Ukraine's retreat from some obligations specified by the International Covenant on Civil and Political Rights (hereinafter referred to as *the Covenant*) and the Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as *the Convention*) for the period till complete termination of armed aggression of the Russian Federation<sup>6</sup>, however, this does not absolve the State from liability for non-compliance with the fundamental rights, the inadmissibility to retreat from which is fixed in the Article 4 of the Covenant (*the right to life, prohibition of torture, prohibition of slavery, illegal imprisonment, the principle against the retroactive law,*

*the right to recognition of the legal capacity, the right to freedom of thought, conscience and religion*) and the Article 15 of the Convention (*right to life, except for cases of death due to legitimate military operations, as well as prohibition of torture, prohibition of slavery and prohibition of punishment without law*).

The occupation of parts of the territory of Ukraine by the representatives of the so-called “DNR” and the “LNR” does not mean that Ukraine “automatically” is not in the least liable for violations of human rights in this territory. Even given the conditions of the armed conflict, the ECHR affirmed that “obligation to investigate exists even in difficult and dangerous conditions, including the conditions of a military conflict”. Including the cases when the events leading to the necessity of investigation take place in an atmosphere of overall violence, and investigators must work in the face of obstacles and difficulties that are forcing them to resort to the less effective methods or cause delays, since the Articles 2 and 3 of the Convention require taking of all necessary actions to ensure effective and independent investigation (*which is a positive obligation of the State*). Even if the complaint in this regard is absent, the investigation must be carried out accordingly upon availability of evidence of ill treatment in the circumstances that make it possible to admit the involvement of representatives of the State. The main goal of such investigation is the effective application of national laws that ensure the right to life and prohibit torture, inhuman and degrading human dignity treatment and punishment in cases related to the State authorities or representatives of the State, and ensuring that the latter to have been made liable for cases of death and ill treatment in which they are guilty.<sup>7</sup>

3

[www.fidh.org/IMG/pdf/eastern\\_ukraine-ld.pdf](http://www.fidh.org/IMG/pdf/eastern_ukraine-ld.pdf)

4 [www.facebook.com/nikolay.zboroshenko/posts/10207821045475447?pnref=story](https://www.facebook.com/nikolay.zboroshenko/posts/10207821045475447?pnref=story)

5 [www.zakon3.rada.gov.ua/laws/show/980\\_344](http://www.zakon3.rada.gov.ua/laws/show/980_344)

6 [www.zakon5.rada.gov.ua/laws/show/462-19](http://www.zakon5.rada.gov.ua/laws/show/462-19), of 21.05.2015

7 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802f038c>



# FOCUS OF THE REPORT

This Report examines the situation of investigations of crimes committed against the civilian population (it is about the violation of the right to life, freedom, personal inviolability and the prohibition of torture) in the conditions of armed conflict in the East of Ukraine. Besides, the Report analyzes the investigation of several events that have signs of crimes associated with the so-called non-combat casualties, i.e. with deaths of combatants (military personnel) that were not caused by the warfare actions.

**D**uring the monitoring study in the Ukrainian government controlled areas of Donetsk and Luhansk Oblasts, as well as in other cities of Ukraine there were interviewed persons competent to provide information concerning the investigation of the **following categories of cases:**

With the purpose of preparing this Report in November-December 2015, there were made **4 monitoring visits** by teams of volunteers of the Center for Civil Liberties **to the Ukrainian government controlled areas of Donetsk and Luhansk Oblasts.** In the course

- 1. The investigation of crimes against civilians committed by members of the illegal armed groups** (hereinafter referred to as IAG) of the **so-called “DNR” and “LNR”** in the areas that for a certain period were under their control.
- 2. The investigation of crimes against civilians committed by AFU (Armed Forces of Ukraine) and the National Guards of Ukraine** in the Ukrainian government controlled areas.
- 3. Investigation of non-combat casualties.**

of these on-site visits there were interviewed victims, their relatives, lawyers, representatives of the NPU, GPU, who immediately conduct pre-trial investigation. Further on, the monitors liaised with some of these respondents for updates about the progress of investigation of the relevant incidents. The Report materials also included data from the studies on a relevant topic previously conducted by the representatives of the Center for Civil Liberties. In addition, the Report included materials collected from open sources, as well as the information provided by competent authorities in response to requests of the authors of the Report.

The following below is a list of criminal proceedings that were examined in the framework of this Report. At the same time, it is worth noting that in this list there are specified those cases, which monitors pay their special attention to. Other cases that also attracted the attention of the researchers are mentioned in passing in the study.

### Topics that have not been addressed in this report, but require additional study

1. The investigation of the crimes of similar categories committed within the line of delimitation, i.e. de facto in a war zone.
2. The investigation into possible criminal offenses regarding the Russian citizens detained in Ukraine. It should be noted that the message in the mass media with reference to the information sources of the SBU and the GPU<sup>8</sup>, as of February 2016, 136 citizens of Russia were convicted in committing crimes under the articles of the Criminal Code of Ukraine, which assume responsibility for crimes against the basics of national security of Ukraine, attempted disruption of its territorial integrity and inviolability, terrorist activity. In this regard, the cases against 36 of them were brought to Court, as well as 7 convictions were delivered. The author of the referred material, a Russian journalist Yegor Skovoroda, at the same time notes that it is often impossible to identify whether the convicted (detained) persons stay up to this time in Ukraine, or have been released in exchange and transferred to the Russian Federation.
3. The investigation of crimes committed in the areas occupied by the IAG as for which information, statements or claims are coming to law enforcement bodies of Ukraine.

### THE AIM OF THE REPORT

**The presented Report does not claim to be absolutely complete and all-round**, in the first place, because of the vast array of crimes that are in the focus, and a rather scarce resource of researchers, and, secondly, because of the limited access to the information concerning the performance of pre-trial investigations. .

**The aim of the Report is not criticism for the sake of criticism, but a constructive impact on the situation** through analysis of trends in the investigation of specific crimes related to the violation of human rights in the context of the armed conflict in the East of Ukraine, as well as the elaboration of recommendations to enhance the effectiveness of such investigations. Further on, it implies their implementation by the competent authorities of Ukraine.

In addition, **the Report focuses on those criminal proceedings, the investigations of which are considered flawed**, which does not mean the absence of successful investigations. But the purpose of the study is not to highlight successes of investigators, but to identify problem areas, as well as in further finding ways to eliminate them.

# OVERALL SUMMARY

The investigation of the crimes, which have become the subject of the study, **whoever they were committed by, currently do not meet the criteria of effective investigation as specified by practice of ECHR.** It is associated with both objective and subjective reasons.

## THE OBJECTIVE REASONS

The **objective reasons** lie, above all, in the lack of capacity – technical, material and human resources, as well as experience of conducting pre-trial investigation of such scale and categories of international crimes. In addition there is a general problem of insufficient qualifications of the investigators and the functional incapacity of the pre-trial investigation agencies against the background of the complexity of the events in the East of Ukraine (“*a hybrid war*”) and the unpredictability of the situation in these areas. The bulk of the crime investigations in the Donetsk and Luhansk Oblasts falls on the shoulders of local law enforcement bodies in the Ukrainian government controlled areas, where the level of availability and competence is rather low even compared with the relatively moderate level of the capital city, the staffing of the law enforcement officers, including investigators, after the events of 2014 (*conversion of some law enforcement officers to the side of the so-called “DNR” and the “LNR” as well as a partial dismissal from service*), by this time has not been completed, reevaluation of employees has not been held.

## THE SUBJECTIVE REASONS

Among the **subjective reasons** is the lack of motivation on the part of law-enforcement system due to unpredictability of the ongoing armed conflict, mutual protection among law enforcement officers, unclear prospects for implementation of amnesty for certain categories of persons, as well as corruption and the presence of a system of personal off-duty (*family, friendly*) relations with the potential performers of crimes.

It is important to emphasize that the named reasons cause shortcomings of the investigation of criminal offenses committed both by the IAG of so-called “DNR” and “LNR” and members of the ATO forces.

It should be emphasized that a high level of political bias is still inherent to the pre-trial investigation officials, regardless of what cases it is about. Among law enforcement officers and investigators there are few of those who are willing to investigate without regard to the political situation. This significantly hangs in balance the ability of investigating bodies to conduct quality investigations and complicates the process of restoring justice. And the lack of structural and

institutional changes in the economy of the region, though not immediately related to the subject of this Report, is directly connected with the problem of impunity, since it provides a monopoly of certain groups of influence, which through the agency of certain powers controlled by them can be privy to the most serious violations of human rights in recent years both on the part of illegal armed groups and pro-Ukrainian forces.

Under such conditions it is difficult enough to speak reasonably of a **process of national reconciliation. The risks associated with a possible announcement of amnesty under Minsk Agreement** are also increasing in view of the considerable number of unidentified performers of acts that could potentially qualify as crimes against humanity or war crimes. To conduct an amnesty that does not admit any chance of impunity for persons who committed felonies, a **quality investigation and fair legal proceedings** for all the facts that have taken place must be provided. Thus, Ukraine must urgently take actions to enhance the effectiveness of the investigation of crimes in the area of ATO.



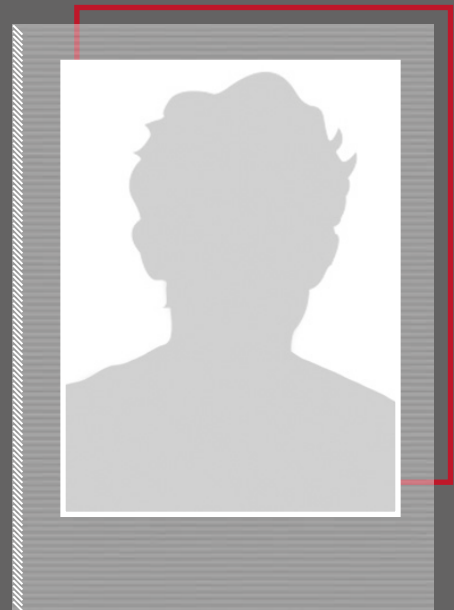
# PROFILES OF VICTIMS

(IN ALPHABETICAL ORDER)

## The **GLADCHENKO** Case

Repeatedly during the period from the summer to winter 2014 faced with extortion of money from him on behalf of local legal counsel Ch. (from who O. Gladchenko borrowed funds for sowing season), as well as beatings and threats of physical violence over all his family with the participation of “people in uniform armed with automatic guns, who introduced themselves as AFU”. O. Gladchenko claims that these were the persons who belonged to the Aydar battalion (one of them introduced himself by the name of Aram, who according to the victim is a local resident and was previously involved in next-to-criminal circles, and was acquainted with Ch.). Documents of theirs they never produced, however, their car plates with Aydar sign identified them as belonging to the battalion, as well as the appropriate signs on their camouflage uniform. Though, during one of the visits they introduced themselves as “Pravyi Sektor” (Right Sector) battalion. Included in the above, these armed individuals assaulted O. Gladchenko by beating, engaged pressure with the use of physical force and threats. This practice managed to stop due to the intervention of other fighters of Aydar battalion that contributed to the police efforts resulting in the arrest of three persons of those participated in criminal acts (Aydar battalion stated that these people do not belong to the battalion). However, what happened next with the investigation of the case (and whether at least any kind of investigation was made) neither de facto the victim nor his representative are not aware of. According to the victim, as of mid-April 2016 the detained persons were not kept under custody (but O. Gladchenko had not been officially notified of it), none of them was given a writ of suspicion of committing a crime. Participants in the attacks, according to some information sources, continued serving in various military units.

№1



### GLADCHENKO

Oleksandr  
Oleksandrovych



B.: 1983



PLACE: Bilokurakine  
Luhansk Oblast

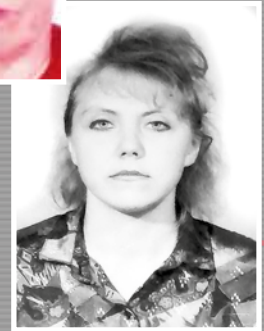


businessman

# The **DOROHINSKYI** *Family Case*

June 14, 2015 Zinaida Mykolaivna Dorohinska and Ganna Ivanivna Dorohinska, residents of Luhanske, Bahmut Diŝtriĉt of Donetsk Oblaŝt, were killed by shots in the head with automatic weapons. According to the Prosecutor's Office, the murder was committed by two members of the AFU – B. and K. with the weapon, which was assigned to K. Before they made an illegal entry into a dwelling of Dorohinskyis – according to their words, with the purpose of finding members of illegal armed groups. The police and the Prosecutor's Office have different versions as to who exactly made the shots in both women that caused their deaths. According to the police version it was B., according to the Military Prosecutor's Office it was K. An adolescent child, a relative of the murdered women, is recognized as the victim in this case. Both of the suspects are currently in pre-trial detention facility of Bahmut, the lawsuit is continuing.

**№2**



The case was investigated by the Bakhmut PD MONP (*Police Department of National Police Head Office*) of Ukraine in the Donetsk Oblast. Proceedings guidance is provided by the Military Prosecutor's Office of the Donetsk garrison. Qualification: items 1, 12 of part 2 of article 115 of the Criminal Code of Ukraine (*hereinafter referred to as the CCU*) («*Intentional wrongful causing death of two persons, committed under prior conspiracy of a group of persons*»), part 2 of article 162 of the CCU («*Illegal entry into a dwelling with the engagement of violence*»).

## **DOROHINSKA** **Zinaida Mykolaivna**



B.: 1970

## **DOROHINSKA** **Ganna Ivanivna**



B.: 1938



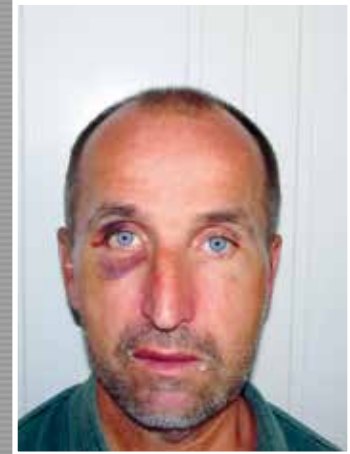
PLACE: **Luhanske**  
**Bahmut District**  
**of Donetsk Oblast**



## The **KOZIUBERDA** Case

Volodymyr Ivanovych Koziuberda, resident of Rubizhne of Lugansk Oblast was abducted on June 22, 2014, by the members of the IAG "Prizrak" ("ghost"), was kept on the territory of JSC "Lysychansky Glass Factory, along with his son, who was taken in captivity with the purpose to lure out Volodymyr himself. V.I. Koziuberda was demanded to fight on the side of the so-called "LNR." He was released from captivity on June 26, after long beatings and torture, which, however, did not force the man to agree to take part in the war operations. The pre-trial investigation in criminal proceedings on the fact of illegal imprisonment of V.I. Koziuberda and his son is being performed under part 2 of article 146 of the Criminal Code of Ukraine. A.V. Kharchenko, who is suspected of committing the crime, is currently a fugitive from the investigation. According to the Prosecutor of Rubizhne, police is carrying out operational search actions aimed at identifying his location. According to V.I. Koziuberda himself, Kharchenko was involved in his abduction. However, whether any investigative actions are being currently taken to investigate into what was happening after abduction - namely the illegal detainment in the premises of the glass factory, torture, beatings, the victim is not notified of.

№3



### **KOZIUBERDA** Volodymyr Ivanovych



B.: 1960



PLACE:  
**Rubizhne  
of Lugansk Oblast**



**businessman, car mechanic**

*The investigation is conducted by the Rubizhne City Dept. of NPU in Luhansk Oblast. Qualifications: part 2 of article 146 the CCU ("Illegal imprisonment or abduction committed against a minor or with selfish motives, against two or more persons, or by prior conspiracy of a group of persons, or in a manner dangerous to the life or health of the victim, or so that is accompanied with causing physical suffering, or with the use of weapons, or exercised for a long time").*

## The **Koštakov** Case

Serhii Yuriyovych Koštakov, b. 1972, senior soldier of reconnaissance unit of the 72-nd mechanized infantry brigade, disappeared November 22, 2014 in the area of ATO in Volnovakha, Donetsk Oblast. S.Yu. Koštakov was an active public figure, known under the call sign “Maestro”, had a heightened sense of justice and repeatedly warned commanders about his intentions to disclose information about their illegal activities. On the day of disappearance (22.11.2014) it was the last time Serhii communicated with his wife, informed via phone that he has drawn up a transfer from the 72nd Brigade to the newly formed 81st Airborne Troops Brigade. On the night of 22 to 23 November 2014 Serhii was last seen alive at the checkpoint on the 177 km of the Slaviansk-Donetsk road (*city of Volnovakha*) which was protected at the time and is protected now by employees of the “Kyiv-2” special purpose battalion of patrol militia force. Serhii was beaten and cuffed to a radiator. Six months later, on June 2, 2015, in the Volnovakha District near the village of Prokhorivka there was found a body of a military with present in the skull holes of at least 20 bullet hits, indicating intentional murder, the hands were cuffed.

Criminal proceeding on this fact was investigated by the Prosecutor’s Office of the Donetsk Oblast, at the moment – it is under examination by the General Prosecutor with the purpose of determining its jurisdiction. Qualifications: article 115 of the CCU (*«premeditated murder»*).

№4



### **KOSTAKOV** Serhii Yuriyovych



B.: 1972



PLACE:  
**Volnovakha**  
Donetsk Oblast



senior soldier  
of reconnaissance  
unit of the 72-nd  
mechanized infantry brigade



## The **Melnykova** Case

Antonida Fedorivna Melnikova, b. 1957, resident of Lysychansk of Luhansk Oblast, head of the DEC (*District Election Commission*) of the territorial electoral district No. 110 on the election of the President of Ukraine (*May 2014*), was abducted on the eve of the election day on May 24, 2014 by the members of the IAG of "LNR", namely "Prizrak" group, which at the time based on the territory of JSC "Lysychansky Glass Factory". She was released on the same day after she handed over the seal of the DVC to the militants. During her time in captivity the woman suffered physical injuries. A.F. Melnikova filed a statement about the crime committed against her on the 5th day after the liberation of the city, on July 29, 2014. According to the woman, after that she was questioned, but at this point the investigation stalled until there appeared critical materials in the press. Eighteen months after the crime was committed she was again questioned with visiting the premises of the glass factory.

**№5**



The accident is investigated by Lysychansk OP GUNP in Luhansk Oblast. Previous qualifications: art. 157 of the CCU («*Obstruction to the exercise of electoral right*»), later on, the qualification was changed for art. 146 of the CCU («*Illegal imprisonment or abduction of a person*»).

### **MELNIKOVA** Antonida Fedorivna



B.: 1957



PLACE:  
Lysychansk  
Luhansk Oblast

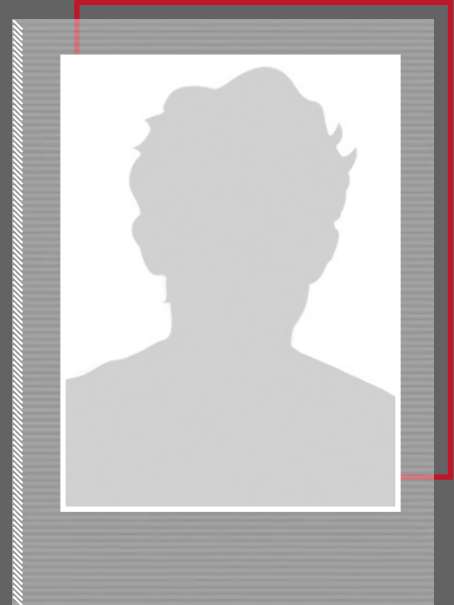


lawyer

## The **Moskaliuk** Case

Oleksandr Gryhorovych Dudnik, b. 1974, and his wife Olga Semenivna Moskaliuk, b. 1974, the residents of Shchaſtia, Luhansk Oblast, September 17, 2014 became a victims of violent armed attack. According to the representatives of the injured party it was committed by the soldiers of the Aydar 24th battalion of territorial defense, E. and a soldier with a call sign "K.". Threatening with weapons, they stormed into the courtyard of the house of the victims in Shchaſtia, 29 Pervomaiska St., wounded Olga Moskaliuk with a gunshot, abducted Oleksandr Dudnik, took away their car, money in the amount of 5000 UAH, property owner's documents. The next day the same persons tried to steal other valuable things from the same house. Then, under the threat of committing to victims further criminal offences, for a month period of time E. had been demanding Alexander Dudnik to buy an apartment for his mother-in-law Natalia Dudnik, who is also an ex-wife of Oleksandr. When this demand had not been satisfied on February 16, 2015, E. together with two other militants with call signs "S." and "B.", armed with assault rifles, again invaded the house of the victims, abducted them and transported to a forest plantation located near the village Peredilsk of Stanichno-Luhanskyi District of Luhansk Oblast. They murdered Oleksandr and Olga by shooting with an automatic gun. In a while Natalia Dudnik moved into the house, where the murdered persons lived before. For a long time the victims were considered missing. Their bodies were found only in June 2015.

**№6**



**DUDNIK**  
Oleksandr Gryhorovych



B.: 1974

Criminal proceedings under conviction of E. were performed by the Military Prosecutor's Office of Luhansk garrison of the Southern Region of Ukraine (located in the city of Rubizhne, Luhansk Oblast), the charge on one of the three attackers was transferred to the Novopetrovsk District Court. However, the defense of the accused put forward a legal refusal over the whole composition of the Court, which was granted with the case sent to the Court of Appeals of Lugansk Oblast for determining its jurisdiction. Qualification: art. 115 of the CCU («Intentional murder»), art. 146 of the CCU («Illegal imprisonment or abduction of a person»).

**MOSKALIUK**  
Olga Semenivna



B.: 1974



PLACE:  
**Shchaſtia**  
Luhansk Oblast



## The **Nazdrychkin** Case

Volodymyr Mylolaievych Nazdrychkin, b. 1965, 20.11.2014, was detained near the checkpoint "Bugaz" (Volnovakha, Donetsk Oblast) by the servicemen of the "Kyiv-2" special purpose battalion of patrol militia force". According to representatives of the injured party, the soldiers of this battalion, brought the man to the checkpoint, chained to a radiator, brutally beaten. Beaten and battered V.M. Nazdrychkin died of injuries. His body was driven out and thrown in a place across the village Dmytrivka, Volnovakha Diŝtriĉt, Donetsk Oblast, where the body was found November 21, 2014.

**Nº 7**

Criminal proceeding on this fact is under examination of the General Prosecutor's Office for establishing its jurisdiction. Qualifications: article 115 of the CCU («premeditated murder”).



### **NAZDRICHKIN** Volodymyr Mylolaievych



B.: 1965



PLACE:  
Volnovakha  
Donetsk Oblast

## The Petrovskyi Case

Oleksii Volodymyrovych Petrovskyi, b. 1978, currently a resident of Irpin, Kyiv Oblast, by the beginning of ATO resided in Donetsk. He was brutally beaten on July 7, 2014 while crossing the “border” between Donetsk and Dnipropetrovsk oblasts after being checked at the Ukrainian checkpoint. The persons who carried out the attack, were in the black Jeep off-roader, which blocked the road for the victim’s car. The attack was carried out by about 12 persons armed with automatic guns and bats with no ID signs. In the accident, the persons who carried out the beating, voiced charges on him that he allegedly stole the car, in which he was driving out of Donetsk, since the vehicle did not belong to him, though O.V. Petrovskyi had all documents and a duly executed power of attorney. In addition, they accused him of separatism. This group was managed by a person with a call sign Khan. Also in the group there was some person called Kušt (possibly, «Hušt»). After getting beaten O.V. Petrovskyi with a bag on his head was brought to the basement of a residential building where he was kept by armed persons without distinguishing marks, some of them were in a civilian outfit. Among those who were guarding him, there was some person called Gnom. Probably, it can be about the person who later turned out in the grip of the “Pravyi Sektor” (“Right Sector”)⁹. On the third day the man was freed, the car and his personal belongings were returned, except for a netbook, mobile phones, terrestrial telescope and money in the amount of three thousand UAH (total material damage amounted to UAH 8100). According to the victim, it was exactly the “Pravyi Sektor” he was held up by, presumably in the premises of a recreation facility owned by Communal Enterprise “Vodokanal” on the outskirts of Dnipropetrovsk. The victim claims that while in the basement, he heard how the recruits were administered an oath, of what he also informed the investigator when interrogated. While being released O.V. Petrovskyi was informed that he matched the “orientation” on some of the kidnappers of children, and that the soldiers “overdone”.

№8



**PETROVSKYI**  
Oleksii Volodymyrovych



B.: 1978



PLACE:

between Donetsk  
and Dnipropetrovsk  
oblasts

The investigation is performed by the NPO (National Prosecutor’s Office) of Ukraine in Dnipropetrovsk Oblast. Qualifications: December 10, 2015, on the application of O.V. Petrovskyi criminal proceedings were launched, the preliminary qualification – part 2 of article 146 of the CCU (“Illegal imprisonment or abduction committed against a minor or with selfish motives, against two or more persons, or by prior conspiracy of a group of persons, or in a manner dangerous to the life or health of the victim, or is accompanied by causing him physical suffering, or with the use of weapons, or exercised for a significant period of time”).



## The **Podushkin** Case

Dmytro Podushkin, b. 1967, a resident of Kramatorsk, Donetsk Oblast, is the owner of the Kramatorsk airport, in which in spring 2014 there were deployed certain units of the AFU, special forces of the SBU (“Alpha” and “Omega” units) and the headquarters of the ATO. May 10, 2014 D.V. Podushkin was captured by unknown individuals at a checkpoint, controlled by the so-called “DNR” His detention took place, judging from available information, in connection with “blacklisting” of his name. D.V. Podushkin was delivered to the premises of Kramatorsk temporary detention facility. In this premise the man together with other people was held for 56 days, and was released July 5, 2014, on the day when the Ukrainian government regained its control over Slaviansk.

№9



The accident is investigated by the Kramatorsk PD MONP (*Police Department of Main Office of National Police*) of Ukraine in Donetsk Oblast. Procedural supervision is carried out by the Kramatorsk local Prosecutor’s Office. Qualifications: part 2 of article 146 of the CCU (*“Illegal imprisonment or abduction committed against a minor or with selfish motives, against two or more persons, or by prior conspiracy of a group of persons, or in a manner dangerous to the life or health of the victim, or is accompanied by causing him physical suffering, or with the use of weapons, or exercised for a significant period of time”*).

### PODUSHKIN

Dmytro



B.: 1967



PLACE:

Kramatorsk  
Donetsk Oblast

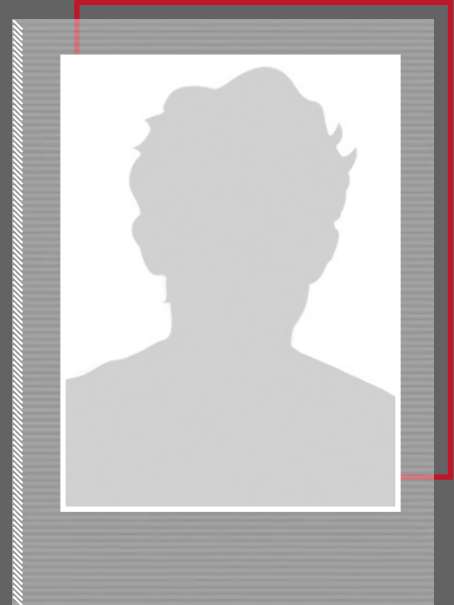


owner of the  
Kramatorsk airport

## The Victim from Pisky Case

The Victim from Pisky Case, b. 1977, a resident of village of Pisky, Donetsk Oblast (during the period of military operations he left for Dobropillya due to complete destruction of his housing as a result of the warfare), was abducted, in his own words, by the soldiers of “Pravyi Sektor” battalion on September 11, 2014 and brought to the premises of the “Evroplast” plant. There he was given an order to disassemble equipment of the enterprise presumably for its evacuation. After his refusal he was beaten by two military men, and the third one released a burst of gun fire on the feet of the victim. As a result, A. got a splinter fracture in the right ankle, displacement and fracture of the right humerus, one bullet still remains in his leg (he cannot get due surgery treatment because of a lack of funds), the two other bullets went right through. He was delivered to a hospital in Selidovo by a representative of the same battalion - commander of the soldiers, who committed violence against him. During his stay in the hospital the victim was visited by enforcement officers of Selidovo, who registered the criminal proceedings. Further on, the proceedings were transferred to Druzhkiv Prosecutor’s Office Administration in Donetsk Oblast for investigation.

№ 10



(the name is not disclosed  
for victim’s security reasons)

Within the framework of the criminal proceedings the case is investigated by the Druzhkiv Prosecutor’s Office Administration in Donetsk region. Qualifications: part 2 of article 15, part 1 of article 115 of the Criminal Code of Ukraine (“Attempted murder”).



PLACE:  
Dobropillya  
Donetsk Oblast



## The **Reznichenko** Case

Ivan Ivanovych Reznichenko, a resident of Soledar, Donetsk Oblast, Deputy of Soledar City Council from the “Batkivshchyna” Party, head of the Independent Trade Union of Miners of Ukraine at “Artiomsil” State Enterprise, was renowned for his pro-Ukrainian position. Disappeared during the occupation of the area by the illegal armed groups on June 21, 2014 (although the city of Soledar has not been under severe control of militants, but they came here in fact unhindered, also here the so-called «referendum» was held), the body was found only 7 months later, on January 18, 2015, due to the own investigation of his close associate, a Deputy of the Soledar City Council, Roman Makhnyk. The body was found in one of the depleted gypsum mines in the farmstead of Striapivka, with traces of firearms injuries and knife hits in the neck.

Members of Reznichenko’s family were not informed of any single court session held with regard to this case. They were also not recognized as an injured party.

The accident is investigated by the Bakhmut Police Department of MONP of Ukraine in the Donetsk Oblast. Qualifications: part 1 of art. 115 and part 1 of art. 289 of the CCU (“Premeditated murder combined with illegal acquisition of a vehicle”). Proceedings guidance was performed by the Bakhmut local Prosecutor’s Office, the decision in the case was made by the Bakhmut City District Court.

№ 11



### REZNICHENKO

Ivan Ivanovych



B.: 1960



PLACE:  
Soledar  
Donetsk Oblast



Deputy of Soledar  
City Council

## The **Shabratskyi** Case

**№12**

Dmytro Sergiyovych Shabratskyi, military serviceman of the 24th Independent Assault Battalion (*pseudo name - Aïdar*), squad leader of the 3rd subversive-intelligence company, was found dead in the territory of a military unit that was based in the premises of a service station on the outskirts of the city of Lysychansk (*345 Chervona St.*) March 26, 2015 (*Military Unit B-0624*). The Certificate on cause of death says: "a penetrating firearms perforating wound in the head with multiple skull fractures over the brain and face areas." The death was caused with a gunshot in the head with a Kalashnikov assault rifle, as well as the explosion of a grenade, in the medical examination statement there is also a mention of a gunshot wound in the thigh. D.S. Shabratskyi's parents insist that their son was murdered, and the death is related to his conflict with the *de facto* leadership of the company, which was based in Lysychansk at that time. The investigators allegedly checked a version of premeditated murder, but from the beginning it stood for a version of suicide. At the time when this Report was already completed, we became aware of the closure of the criminal proceedings on the fact of death of D.S. Shabratskyi. The investigator made his decision based on the ground of the alleged absence of *corpus delicti* (*item 2 of part 1 of article 284 of the CCU*), claiming that "D.S. Shabratskyi's death came as a result of suicide". The victim party's counsel challenged the closure of criminal proceedings.

Pre-trial investigation on signs of offenses stipulated by part 1 of article 115 ("*Premeditated murder*") and art. 120 ("*Driving to suicide*") of the CCU is carried out by the Lysychansk PD MONP (*Police Department of Main Office of National Police*) of Ukraine in Lugansk Oblast. Procedural guidance is performed by the Military Prosecutor's Office of Luhansk garrison of Southern region of Ukraine (*located in the city of Rubizhne, Luhansk Oblast*). An occupational investigation on the circumstances of the D.S. Shabratskyi's death was not conducted.



### **SHABRATSKYI** Dmytro Sergiyovych



B.: 1987



PLACE:  
**Lysychansk**  
**Lugansk Oblast**



**military serviceman**  
**of the 24th Independent**  
**Assault Battalion (Aïdar)**



## PRE-TRIAL INVESTIGATION AND THE CRITERIA OF ITS EFFECTIVENESS

Today in Ukraine there are four State agencies in operation, investigative units of which are authorized to carry out the pre-trial investigation: The National Police of Ukraine, Security Service of Ukraine, bodies that exercise control over the observance of tax legislation and the State Bureau of Investigation (before the moment of its formation – Prosecutor’s Office). The Prosecutor’s Office supervises and provides procedural guidance during the pre-trial investigation, which is conducted by other investigative bodies, and supports State prosecution in court.

The progress of pre-trial investigation is determined by the Criminal Procedural Code of Ukraine. It begins as soon as the Prosecutor or investigator logs the information into the Unified Register of Pre-Trial Investigations within twenty four hours after the receipt of notice of an event that incorporates signs of alleged commission of a crime. NPU conducts pre-trial investigation of all criminal offenses, other than those attributed to the jurisdiction of other bodies of the pre-trial investigation. The SBU (*Security Service of Ukraine*) investigates, in particular, statements about alleged crimes committed against national security, peace, international order and territorial integrity of the State.

Upon receipt of sufficient evidence that allows assuming the identity of the suspect in a criminal case, the suspect is given a written notice of suspicion. A pre-trial investigation ends in case of closure of criminal proceedings, or when the Court receives one of the following documents – a bill of indictment, a request for application of coercive actions of medical or educational character, or a petition for the release of a person from criminal liability.

It should be noted that in criminal proceedings subjected to the analysis in the course of this study, the majority of the above criteria has not been met.

**This algorithm simultaneously has to meet the minimum criteria of efficiency of investigation, stipulated by certain practices of the ECHR<sup>10</sup>:**

- independence and impartiality (objectivity),
- efficiency and thoroughness (bona fides),
- timeliness and the absence of delays in time,
- adequate competence,
- the involvement of the victim,
- sufficient awareness of the public.

10 [www.info-prensa.com/article-1107.html](http://www.info-prensa.com/article-1107.html) Criteria for the effectiveness of the investigation of the facts of ill treatment: a review of the case practices of the European Court on Human Rights, in particular in cases against Ukraine. V. Kasko

# GENERAL ASSESSMENT

In order to understand how to change the scope of registration and pre-trial investigation of criminal offenses (and whether they've changed at all), the researchers applied to the **Prosecutor's Office in Donetsk and Lugansk Oblasts, the Main Office of the National Police of Ukraine in both oblasts, as well as to the regional offices of the State Court Administration of Ukraine in Luhansk and Donetsk Oblasts** with inquiries on the number of applications and criminal proceedings registered in the URPI (Unified Register of Pre-Trial Investigations) on the facts of commitment of crimes stipulated in the following articles of the Criminal Code of Ukraine: 146 ("Illegal imprisonment or abduction"), 121 ("Intentional grievous bodily injury"), 122 ("Intentional moderate bodily injury"), 125 ("Intentional slight bodily injury"), 126 ("Beatings and battering"), 127 ("Torture"), as well as on the number of completed pre-trial investigations and approved sentences in these categories of proceedings **during the period from January 1, 2012 to November 01, 2015.**

Responses to these queries we have at our disposal, allow to make the following conclusions<sup>11</sup>.

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<sup>11</sup> Original documents provided in the Ukrainian version of the Report [www.ccl.org.ua/wp-content/uploads/2016/06/Spravedlivist\\_CCL\\_MF\\_Webflow-1.pdf](http://www.ccl.org.ua/wp-content/uploads/2016/06/Spravedlivist_CCL_MF_Webflow-1.pdf)

# LUHANSK OBLAST

**L**ocal general courts of Luhansk Oblast during the year of 2012 and a period of up to the end of 2015 had delivered no single judgement of not guilty on these articles. But, without grasping the context of the events of the last time, from the overall statistics it would be difficult to conclude that in the area there is an ongoing armed conflict with massive violence to the civilian population. At least the information on the delivered judicial sentences almost does not bear any trace of it.

Particularly noteworthy is the fact that, despite the scale of abductions and torture in Luhansk Oblast, over the period of 2014–2015 the local courts delivered only one sentence under the art. 146 of the CCU (“Illegal imprisonment or abduction”) and – under article 127 of the CCU (“Torture”).

This data is worth comparing to the information provided by the National Police in Luhansk Oblast.

In statistics of the law enforcement bodies the application of the article 127 of the Criminal Code (“Torture”) is limited to some rare cases. Unlike the Donetsk Oblast (*see below*), in Luhansk region in 2013 there were recorded 4 cases of such offenses, pre-trial investigation materials on the same offenses were delivered to Court with indictment. But in 2014, contrary to events in the region, there were reported only 3 offenses. At that, none of the cases was sent to court, which corresponds to the information of the State Court Administration. In 2015 the number of recorded cases rises to 7. At that, one of the proceedings is closed, one is sent to Court. At the same time, as the data from the judicial statistics show, no judicial sentences as of the end of 2015 were delivered.

At the same time, the number of recorded criminal offenses under art. 146 (“Illegal imprisonment or abduction”) in Luhansk region rises dramatically along with the beginning of the ATO. As of May 2014 it is 40 cases, in June their number rises to 105, in July – to 202, in October – to 539. Further on, growth rates are slowing down considerably (*as of December 2014 there are only 569 recorded offenses that is 33 times more than statistics of 2013 under the same article of the Criminal Code*). At that, the number of closed proceedings is growing proportionally (*before the end of 2014, there are nearly 100 of them*), but to Court only a few ones were delivered – 9 materials of criminal proceedings for the whole year of 2014. In 2015 the number of recorded criminal offenses under art. 146 of the CCU is reduced fourfold – to 143 (*although we have statistics for part of the year, namely, for 10 months*). Performance indicators of the specified kind of criminal offences still remain high (*almost 10 times higher*) if compared with “pre-war” time. At the same time, consistently low is the number of completed pre-trial investigations sent to Court with indictment (*during a part of 2015 there were 6 of them, while 16 proceedings were closed*).

Returning to judicial statistics, it is worth reminding that for two years there has been delivered only one conviction, where the remaining criminal cases have gone remains a mystery.

Paradoxically, the number of convictions under art. 126 of the CCU “Beating and torture” is significantly reduced compared with “pre-war time”: 9 and 2 respectively in 2014 and 2015 as compared with 14 in 2013. This trend is also reflected in the statistics of the NPU. The number of recorded offenses qualified as “Beating and torture” surprisingly decreases from

233 in 2013 to 84 in 2014. To Court only 34 cases were delivered (*in 2013–118*) and 166 proceedings were closed. In 2015 these are already rare cases, their number reaches the level even lower than that in pre-war time (*as of October, 2015–8 cases, materials of 3 proceedings directed to Court, 30 proceedings are closed*).

In 2014 the intensity of the recorded offenses related to bodily injuries of varying severity also decreases. While in 2013 those were about 4600, at the end of 2014 around 2500 were on record. Also significantly fewer proceedings were brought to Court: 600 as compared with about 1800 in 2013.

In 2015, the amount of the recorded offenses under articles 121, 122, 125 of the CCU is significantly reduced. For example, as of the middle of the year (*June*) their number equals the number of the recorded offenses only for one month of 2014 (*even before the beginning of armed conflict*). As at October 2015, their total number reached 230 (*for comparison, as of October 2014 it was about 2460 cases*), materials of only 231 proceedings were sent to court that is three times less as compared with the statistics of the previous (2013) year and almost 3 thousand proceedings related to bodily injury were closed.

Number of judicial sentences in cases of causing light bodily injury is same way dropping in 2014–2015 accordingly: 253 in 2013, 182 in 2014 and 151 in 2015. Regarding the judicial sentences related to bodily injury of medium severity, their peak same way falls upon the year of 2013 (32), and in 2014 and 2015 the number of sentences decreases to 22 and 19 respectively. The number of sentences under art. 121 (“Deliberate grievous bodily injury”) remained essentially stable: 2013–36, 2014–32, 2015–37.

# DONETSK OBLAST

Interesting is the fact that, for comparison, the courts of the Donetsk Oblast in 2012 did not delivered any sentence under any of the specified articles. But statistics changes dramatically in 2013.

Same way as in the Luhansk region, in the Donetsk area there is sharp increase of registered in URPI (Unified Register of Pre-Trial Investigations) proceedings under art. 146 of the CCU (“Illegal imprisonment or abduction”) right with the beginning of the armed conflict (in March 2014–8, in June – 131, in July – 178, in August – 209 (peak). Further on, the trend is decreasing (December 2014–97, March 2015–58, October 2015–20), which corresponds to the level of the “pre-war time. At the same time, these relatively high numbers concern purely URPI, but when it comes to bringing cases to court, then their number is extremely low: in total from June 2014 to October 2015 only 12 cases under article 146 of the CCU were completed and brought to Court with an indictment. One can compare these figures with statistics of registered criminal proceedings—the latter prevail

in more than 110 (!) times—and namely, 1438. At that, the number of sentences becomes minimal: 2 in 2014 and 7 in 2015. These figures, the level of which corresponds to the data of the Lugansk region, one way or another, are scant on the background of the real number of abductions and people held in captivity in Donetsk Oblast. It is about thousands of such cases.

The situation similar to the Lugansk Oblast is also with the investigation and judicial consideration of the crimes that qualify under article 127 of the UCC (“Torture”). Even the number of crimes registered in URPI is minimal: in 2013–9, in 2014–2015 – even less: 5 and 6, respectively. During the years of 2014–2015 only in one criminal proceeding the pre-trial investigation was completed and brought to Court with an indictment. As for the number of sentences, in 2014 and 2015 only one conviction was adopted (by the way, in comparison with the previous year of 2013 the number of sentences decreased fourfold).

The unclear tendency (still similar to the Luhansk region) is observed with

article 126 “Beatings and battering”. The number of registered proceedings becomes several times less: in 2014–225 (as compared with 1090 in 2013), and continues to decline in 2015 (74). In 2014, 234 of pre-trial investigations were completed, but their number decreased dramatically in 2015 to 89. At the same time, under this article a relatively few cases were brought to Court: during 2014–2015 there were 48 and 12 of them respectively.

A similar situation is with crimes related to the delivery of bodily injuries of varying severity. The number of proceedings registered in the URPI in 2014 remained at the level of 2013, but with a noticeable jump in March-September 2014 (543, 529, 559 reported cases in, respectively: April, June and July). During the 2015 the number of registered crimes declined (on average – about 200 registered crimes per month). But only a small amount of materials of criminal proceedings was directed to Court: from September 2014 to October 2015, i.e. one and a half years, in total there were 800 of such cases, which corresponds to

## Data regarding the number of indictments delivered to Court and persons brought to justice by the Military Prosecutor’s Head Office of Ukraine including by the Military Prosecutor’s Office of the ATO Forces during 2014-2015 and 3 months of 2016

Without account for repeated decisions		No. of Indictments in Court, persons brought to justice					
		2014		2015		3 months of 2016	
		Indict-s	Persons	Indict-s	Persons	Indict-s	Persons
Total of Indictment Bills delivered to Court		1002	1060	3579	3671	1051	1083
Including those committed by the employees of	Of them						
	Of them						
	Of them						
	Of them						
	Of them						
	Of them						
	Of them						
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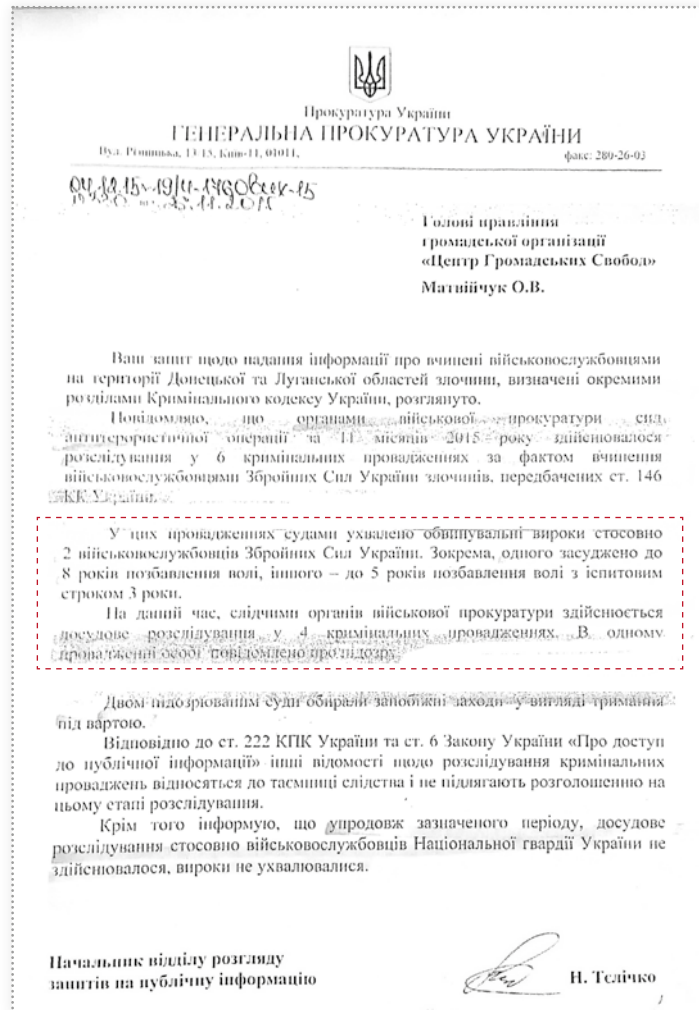
one and a half month statistics of registered crimes in the “hot” period. At that, the number of **convictions for serious and severe bodily injuries** in 2014–2015 years is **reduced by more than half** compared to the year 2013 (323 and 189).

Thus, there are grounds to assert the existence of a **trend of growing gap between statistics data as for pre-trial sentences under specified articles of the CCU and the real development of events in Donetsk and Luhansk Oblasts. At the same time, if within the limits of article 146 of the CCU, at least we can trace a jump in the number of statements on offenses and cases registered in URPI (Unified Register of Pre-Trial Investigations), this number decreases dramatically when it comes to judicial consideration of cases under this article of the CCU. Judging from the statistics, tortures in armed conflict are not applied at all, which contradicts the reality; and the number of bodily injuries in the Donetsk and Luhansk Oblasts since 2014 significantly decreased, which does also not correlate with the real situation. The answer to a question on “how to interpret these statistics?” – should be the subject of a separate study. However, in our opinion, one of the most probable explanations may be flaws in the work of the law enforcement system.**

Definitely, the above statistics gives inaccurate picture about the general condition of fighting these kinds of crimes, since the issue is not just exclusively on crimes committed in the context of armed conflict, but also on the total number of crimes, including purely criminal. It is advisable in this case to refer to the statistics of the General Prosecutor’s Office.

As regards criminal proceedings concerning **crimes committed by the Ukrainian military from the ATO units**, in response to the information request of December 4, 2015, the **Ukrainian General Prosecutor’s Office** noted that the **bodies of Military Prosecutor’s Office of the anti-terrorist operation forces within the period of 11 months of 2015 the investigations were carried out in 6 criminal case proceedings** on the fact of the crimes committed by servicemen of the Armed Forces of Ukraine, **envisaged by art. 146 of the CCU (“Illegal imprisonment or abduction of a person”)**.

The courts endorsed **indictments regarding the 2 servicemen of AFU**: one sentenced to 8 years in prison, the other – to 5 with a probation period of 3



Response of the General Prosecutor’s Office of Ukraine to the CCL’s request for information on the number of the criminal cases against the Ukrainian military servicemen who are suspected in committing crimes on the territory of Donetsk and Luhansk Oblasts. As stated in the document, the number of the convicted representatives of the Ukrainian Armed Forces is 2. As of December 04, 2015 the Military Prosecutor’s Office conducted pre-trial investigations in 4 criminal cases.

years. Now investigative authorities of the Military Prosecutor’s Office carry out pre-trial investigation in **4 criminal case proceedings**, in one of which one person is notified of the suspicion, two persons are in custody as a preventive measure.

As for the representatives of the National Guard of Ukraine, according to the reply of the GPU, **“during the specified period of time no pre-trial investigation in respect of military personnel of the National Guard of Ukraine was carried out, no judgments were delivered”**. Moreover, *“To date, Main Directorate for Investigations received no information on criminal proceedings delivered to investigative units of the National Police with regard to crimes committed by military personnel”*. And this means that none of the case proceedings, involving military personnel of the National Guard, were investigated by the Military Prosecutor’s Office.

However, within a few months, as of April 2016, we already see very different statistics.

In response to the information request of the Centre for Civil Liberties of April

2016, the GPU has provided information on the **number of bills of indictment delivered to Court by the Main Military Prosecutor’s Office of Ukraine and brought to account persons from among the National Guard of Ukraine and the Security Service of Ukraine**. The data as for servicepersons of the AFU in reporting are not singled out. We submit the information of the GPU in a table form as provided by the Office.

In response to the information request of the Center for Civil Liberties, GPU also reported on the status of the investigation of the crimes committed by the members of the IAG of the so-called “DNR” and “LNR”. Here it is worth noting the positive tendency to combine episodes of committed crimes in the framework of one criminal case proceeding. In the GPU’s response it is indicated that the Main Military Prosecutor’s Office carries out pre-trial investigation in **criminal proceeding** on the grounds of the crimes stipulated by part 1, 2 of art.438 (“Violation of the laws and customs of war”), part 1: “The ill-treatment of POWs or civilians, the expulsion of the civilian population for

forced work, looting national treasures in occupied territory, the application of means of warfare prohibited by international law, other violations of the laws and customs of war stipulated in international agreements, consent to be bound with which is given by the Verkhovna Rada of Ukraine, as well as the issuance of the order of committing such acts”, part 2: “The same acts, if they are combined with the intentional murder”), **item 1 of part 2 of article 115** (“Intentional murder of two or more persons”), **part 3 of art. 258** (“Terrorist act that led to the death of a man”), **part 1 of article 258-3** (“Creation of a terrorist group or terrorist organization, the leadership of such a group or organization or participation

*in it, as well as organizational or other assistance in the creation or activity of a terrorist group or terrorist organization”).* As a result of pre-trial investigation it was established that **during the years of 2014–2015 members of the IAG in the occupied territory created 62 camps and other places of unlawful detention of Ukrainian military servicemen and civilians; there were identified 2,998 people unlawfully deprived of freedom**, almost all of them were **subjected to ill-treatment and torture, held in inhumane conditions**; besides, the General Prosecutor’s Office established the facts of **murdering 2 people during their unlawful detention**. Within the framework of

these proceedings there were **admitted and interviewed 592 victims**. As for the efficiency of pre-trial investigation the GPU reports not too comforting statistics: **“One participant of the terrorist organization** is informed of suspicion. He is declared wanted, and the Court issued an authorization for his arrest and delivery to the Court in custody to define precautionary measures”. The reply does not specify who namely it is all about of. At the same time the GPU claims that all the evidence obtained in the pre-trial investigation, have been handed over to the International Criminal Court to address the issue of the opening of proceedings regarding the events in the East of Ukraine.



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# COMMON OBSTACLES TO EFFECTIVE PRE- TRIAL INVESTIGATION

**Investigation of each of the above mentioned categories of crimes has certain inherent problems and obstacles of its own. At the same time, there are also common problems of pre-trial investigation, which, in our view, are inherent to investigation of all categories of crimes and that point out the fact that reasons for insufficient quality of investigation are not limited to the circumstances of the war, but also represent a general problem of pre-trial investigation authorities failing to act effectively. This situation, in turn, creates serious risks that are formulated at the end of this Report.**

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# 1. The problem of capacity and proper motivation of investigation

*Lack of **Capacity** of the material and human resources is a clear objective reason of inefficiency of investigation, including those that were the subject of this study.*

This problem induces a range of far-reaching consequences that manifest in careless approach to investigation – an effort to quickly close the proceedings or predisposition to develop the most “probable” for the investigator version, which is more promising as to faster completion of the investigation. At that, all other possible realistic versions are ignored and simultaneous testing of their validity is not performed, witnesses and victims of a crime are not timely detected and not interviewed, and the materials of

criminal proceedings are “deposited” in the offices of the investigators as a “dead weight”.

The investigators also often lack the proper base material (*ranging from office equipment to cars*), which makes effective investigations almost impossible. Sometimes volunteers lend a helping hand, but this practice is episodic because of the extremely low level of confidence in the law enforcement system on the part of society.

Overload of investigators of criminal proceedings accompanied with miserable pay for their work has long been and remains a serious problem for Ukraine. In the liberated areas of Donetsk and Luhansk Oblasts, where the volume and complexity of cases increases multi-fold, and also in the presence of other demotivating factors, this issue gains a great scale. Most investigators on condition of anonymity share that even with that

existing low salary of theirs they are not paid in time.

According to the Head of the Main Office of the NPU in Donetsk Oblast of Ukraine Viacheslav Abroskin<sup>12</sup>, **“the police understaffing in average is 30%, in «frontline» Avdiivka – 70%; the police officers actually work without days off”**. It is about **understaffing of 2000 police officers in Donetsk area and about 1000 police officers in Luhansk region**<sup>13</sup>. This can be explained not only by the complexity of the work environment, and in particular, by the fact that for those who agrees to work in these oblasts, there are no additional motivating conditions created. At the same time, the leadership of the National Police of Ukraine stated its intention to direct for service in Donetsk and Luhansk Oblasts those of former law enforcement officers who failed to pass reassessment within the framework of the MIA’s reform. According to V. Abroskin, it is about those employees who “lacked one or two points in the process of reassessment”. According to the Press-Secretary of the NPU Artem Shevchenko, “obviously compromised persons will not get to the service, the chance will be only of those who simply failed to pass tests or failed a job interview”, moreover, after 1–2 years of their service they will have to pass their second reassessment with final conclusions. However, the prospect of such a way of resolving the problem of understaffing arouses indignation in the public sector<sup>14</sup>.

Investigator of the Military Prosecutor’s Office in Luhansk Oblast, who the monitors managed to talk with, carries out procedural supervision of approximately 400 criminal cases. At that, he is not provided with any fleet vehicle, which significantly hampers the performance of his official duties.

One of the investigators of the National Police Office of Ukraine in Luhansk Oblast in the city of Kreminna, has, in her own words, about 150–200 cases in proceedings. However, now, she says, the situation is not as complicated as in 2014, when instead of 16 persons to be on staff in the investigative unit there were only 5 employees.

As the mobile team became aware, in the investigative unit of SBU in Kramatorsk the facts regarding seizure of the facilities of the **Kramatorsk City Dept. of MIA of Ukraine** and premises of other government bodies, committing terrorist attacks, etc. by the members of armed groups of the so-called “DNR”, are combined in one criminal proceeding, but are almost not investigated. The case file, in response to the assignment to establish all relevant circumstances, contains formal noncommittal responses about the impossibility of their determination. The reason is a too small staff of the Department, which consists of 5 investigators. They are fully loaded with case proceedings associated with holding the so-called “referendum” in Kramatorsk in May 2014. As for the operational unit of the SBU, its priority field is identifying offenses committed by the police employees, and not by the members of illegal armed groups. Thus, there is just nobody available to address the investigation of seizure of the City Dept.

<sup>12</sup> [www.facebook.com/Vyacheslav.Abroskin/posts/1563107103981958?pnref=story](https://www.facebook.com/Vyacheslav.Abroskin/posts/1563107103981958?pnref=story)

<sup>13</sup> [www.facebook.com/artem.shevchenko.9/posts/10208839573889108](https://www.facebook.com/artem.shevchenko.9/posts/10208839573889108)

<sup>14</sup> [www.facebook.com/gromady.dn.ua/posts/852088644920896](https://www.facebook.com/gromady.dn.ua/posts/852088644920896)

## 2. Lack of experience of working in the conditions of armed conflict

As noted in the preface to the Report, the law enforcement system for the first time faced the crimes of this magnitude: in the intensity, in the number of victims, in the features of performers' network, etc. On the territory of our present-day state until now there have never been any mass armed conflicts and that is why the law enforcement agencies have no experience in such conditions and with criminal offenses of such specifics. Moreover, it is not about a common, linear war, but the so-called "hybrid war", which involves countless number of factors and tactics. Investigators lack qualifications, experience of using the already developed typical methods of investigating such crimes, and the ability to analyze and associate a significant amount of information. There are also no technical means (*available IT technologies*) to simplify the process and make it more efficient. These factors

One of the problems with which investigators in the Donetsk and Lugansk Oblasts face in their daily work and which is caused by the combat operations is the absence of expert institutions in the occupied territories. Some expert institutions were relocated to settlements of the liberated territories, with some issues we have to address in the nearby oblasts. For example, investigators of Luhansk Oblast apply for cytological expert examination to a forensic lab in Kharkiv. This even more complicates and slows down the process of investigation.

are greatly complicating the process of investigating criminal offenses in the area of ATO.

The combat operations, de facto — the war that unfolded in Eastern Ukraine, in fact greatly complicates work of investigators. On the other hand, this fact is often

manipulated, justifying their failure to act by the complex military-political situation in the region. A marker in this case is the absence of the very process of investigation and appropriate effort of an investigator as for taking investigative actions.

## 3. Common problems of the system of criminal justice

From the viewpoint of researchers there is a number of other factors and reasons that generally inhibit the work of the pre-trial investigation bodies, regardless of the geography and category of crimes.

Certainly, the reform of the system of criminal justice and the implementation of legislative acts, which are designed to implement this reform is vitally essential for Ukraine.

However, sometimes, the implementation of the reform of the criminal justice sector creates temporary, but extremely serious problems that affect the overall efficiency of conducting pre-trial investigations. In particular, it is about a certain "paralysis" of the work of the police operational units (*in particular, the Criminal Investigation Department of the National Police of Ukraine*), as well as of crime expert units. One has also frequently to hear complaints from the

employees of law enforcement agencies, the Prosecutor's Office about the shortcomings of the implemented in 2012 Criminal Procedure Code of Ukraine, which, in their opinion, are in the too intense judicial control over the actions of an investigator. However, the validity of such complaints, according to some experts, is often associated with deficiencies in the system of training and improving skills of investigators and prosecutors.



## 4. The qualification of the use of torture and other shortcomings of the national legislation

The problem of a complex investigation has another dimension associated with the imperfection of national legislation. Human rights organizations have repeatedly pointed to a noncompliance of section 20 of the Criminal Code, “Crimes against peace, humanity and international law”, with the international humanitarian law, including the Rome Statute of the International Criminal Court (*and on the initiative of the Ukrainian human rights organizations the relevant recommendation was included in the resolution of PACE of April 21, 2016*). This negatively affects the efficiency of the investigation because of the impossibility of proper qualification of the criminal actions as war crimes and crimes against humanity.

As an example, one can cite torture, which should be qualified as a corresponding international crime stipulated by section 20 of the Criminal Code of Ukraine, given the massive scale and systemic nature of this phenomenon in the course of armed conflict. Instead, torture is still qualified under article 127, prescribed in another section of the Criminal Code of Ukraine. Part one of this article defines torture as an offense of medium gravity and envisages 2 to 5 years of imprisonment. These actions become a serious offense only in case of their repetitiveness or committing torture by prior conspiracy of a group of persons, or for reasons of racial, national or religious intolerance, and then they shall be punishable by a term of 5 to 10 years in prison.

Thus, in the hands of investigator there is wide room for abuse while qualifying a criminal act. This situation not only does not meet international standards, but also could allow performers of abductions and torture of civilians to be amnestied under the Minsk Agreements, even if the performers of serious crimes, as it has been repeatedly stressed in the public statements of officials, are not eligible for amnesty.

Additional problems are the facts that in their reports forensic experts do not account for the traces of torture on the bodies of the victims, and investigators do not question or task them with this regard; in addition, investigators do not prescribe forensic-medical examination for determining the signs of torture.

## 5. Dependence on the situation of the local or national level

Factor of dependence of investigators upon the leadership of local or higher level, in essence, is a **violation of the abovementioned principle of independence and impartiality (objectivity)**, relevant for all categories of investigations, analyzed in the Report, and regardless of who namely according to investigations commits offenses. For this very reason, in this section of the Report, we do not divide criminal offenses and respective proceedings into the ones committed by the IAG of the so-called “DNR”, “LNR” and those committed by the ATO forces. Instead, their classification is made on the basis of the shortcomings of the pre-trial investigation identified in the course of research.

**As for the crimes committed by the forces of ATO**, the hundreds of detained participants of the ATO, as well as several demonstrative cases (*such as “The Aydar*

One of the lawyers told the monitors about investigators, who in a personal communication asked him for tips as for how to deal with crimes, committed by pro-Ukrainian forces of ATO: whether to investigate or turn a blind eye to them.

One of the female investigators of the Luhansk Oblast investigating a case, where the accused is a combatant of Aydar battalion, complained that those who yesterday were “bandits” — today are “heroes”. From her words it was possible to conclude that such a transformation affected the position of the investigation.

*Case” and “The Tornado Case”*) are not indicative of the overall efficiency of investigations of crimes committed by Ukrainian forces against the civilian population. Through the example of the examined during preparation of this Report cases we see selectivity in

making certain perpetrators criminally liable. Thus, against a background of sufficiently high statistics as for number of bills of indictment delivered to court and individuals made liable, there remain cases, investigations of which are difficult to call unbiased and effective.

## 1. The Gladchenko Case:

during one of the arrivals of racketeers O. O. Gladchenko called the police, but the law enforcement of Bilokurakino took no action to stop the unlawful actions. According to the victim, detention of criminals became possible only with the participation of other members of the same Aydar battalion. After the detention, the victim applied with a statement to the law enforcement body, was questioned by them, as well as by the representatives of special services. Later on the police called and questioned witnesses. But, as it turned out, the then head of investigative department of the Administration of MIA was in a close family relationship with Ch., whom O. O. Gladchenko calls the one who ordered the asset-grabbing attack on him. After the appointment of a new head of the investigative department, the case got off the ground, however, further investigation of the case was hindered by regional Prosecutor's Office for its inaction. Last time the investigative actions in this case were carried out in April 2015. Notably enough that the borrower Ch., who, in the words of the victim, was an employee of the police and the Prosecutor's Office in the 1990s, when communicating with the father of the victim, who is a victim of the banditry too, advised him not to apply to anywhere, because "he's got the police in his left hand, the Prosecutor's Office in the right hand, and the Court is in here – and pointed to the groin." The victim believes that they are trying to "hush up" the case, he claims that the investigators openly tell him that "the case will be buried here."



Photo illustrations to the article "In Starobilsk region a gang is arrested, members of which claim to belong to the Aidar battalion" on the web-site of Informator.lg.ua. As stated in the article, these were the people who attacked Gladchenko

Despite the presence of a large number of materials on crimes against the civilian population committed by the Aydar battalion, in the northern part of Luhansk Oblast, there is not sufficient information about the specific circumstances that give a deeper understanding of the context of these crimes and their rooting into the local situation. According to the information obtained in the course of numerous trips of monitors to the northern part of Luhansk region, individual units of the Aydar battalion were used as a de facto private paramilitary units. Despite an official belonging to the ranks of the AFU and possessing military service cards, they fulfilled, in fact, private orders, including abductions of people, execution of asset grabbing attacks ("reiderstvo"), performing functions of private guards for the local financial and industrial elite, etc. Such cases have still not been effectively and duly investigated.

Converting individual volunteer units into "private armies" under the control of the local elites blocks investigations carried out by local law enforcement officers who are also dependent on those elites. At the same time, the military units to which offenders claim to be belonging, deny any connections with the criminals, or do not acknowledge their membership in the battalion.

## 6. The Moskaliuk Case:

in the indictment materials, which are under consideration of the court, E. is not in the status of a serviceman since he is charged with desertion. In addition, the Prosecutor's Office did not produce the charges in one of the episodes: E. is not charged with a violent robbery attack against the victims in September 2014 (in the period when the E. still was a military serviceman).

The territory of Donetsk and Luhansk Oblasts, returned under control of Ukraine, in part, however, continue to be controlled by the same financial and industrial groups of influence who in control of them also before the start of combat operations. Neither their role in the process of occupation of the territories by the illegal armed groups, nor in the subsequent events, according to the authors of the report, are not investigated by the law enforcement authorities.

**Pre-trial investigation sometimes was carried out formally (“for show”), i.e. imitation of conducting investigative actions to fulfill the formal requirements of the CPC (Criminal Procedural Code), which violates the criteria for effective investigation embodied in the decisions of the ECHR.**

The Monitoring team for many times met with complaints of victims of crimes and their advocates about the fact that representatives of law enforcement bodies, **allegedly carrying out the investigation, in fact only imitate it to meet the formal requirements of the criminal procedure legislation.** In fact, the quality investigation is not happening, and the efforts are directed to “destroying the case”. That is to say that the documents are executed, requests for information are forwarded, but these materials are vague in nature and, in addition, have an overstretched time frames.

As the Center for Civil Liberties managed to find out in the course of its own investigation, during the occupation of the northern Luhansk region by the members of the IAG of the so-called “LNR” on the territory of JSC “Lysychanskyi Glass Factory” there was housed a base of “Prizrak” group under the command of Oleksii Mozgovyi killed last year. On this base, in particular, military machinery, heavy arms were kept, civilian hostages were brought here, and here they were tortured and used as slaves. However, as it becomes clear from the responses to the CCL’s requests for information, the law-enforcement bodies and the SBU are not investigating the events at Lysychanskyi Glass Factory from this point of view, instead, they are investigating shooting attacks, as stated in the official responses to our queries, “by the unidentified persons”, qualifying it as a “terrorist act”. In addition, it is a well-known fact that these shooting attacks were carried out by the Ukrainian Government forces as part of the operation to liberate Lysychansk. It should be noted that the de facto the factory company is controlled by former Mayor of Lysychansk, close to one of the most influential representatives of the Opposition Bloc. How exactly the militants gained access to the territory of the enterprise, the law enforcement bodies, judging by the received by the CCL responses and in spite of public statements by officials, do not investigate. According to the local activists, the same persons from among the local elites controlled (or, at least, carried out a partial control) one of the platoons of the Aydar battalion, which was based in Lysychansk immediately after the liberation of the city and up to mid-2015.

## 9. The **Podushkin** Case:

According to a representative of the victim, criminal proceeding as for abduction of his client is filled with a large number of documents which do not belong to the procedural ones, are of pointless and frankly incomprehensible nature – correspondence with the victim in response to his complaints, suggestions and comments. This increases the number of papers in the case, but gives no evidence of any efficacy of the investigation.

In cases related to abductions of people, the investigation actually ceases from the moment when the person was found. Further on, investigative actions to further bringing the persons guilty of abduction to criminal liability, law enforcement bodies do not actually carry out.



## Specific shortcomings of the work of the investigators:

*Neglecting their duty regarding the timely establishing and interviewing witnesses and other urgent investigative actions.*

According to the Criminal Procedural Code of Ukraine (*hereinafter referred to as CPCU*), the investigator is obliged to take certain procedural actions in the investigation of the case. To such actions belongs also questioning witnesses. But sometimes investigators do not adhere to this commitment.

### 5. The **Melnikova** Case:

Investigators had never questioned witnesses who saw the moment of capturing the woman by the members of the IAG. Their contacts the victim submitted to the investigators, even having received a prior consent of the witnesses to communicate with the investigation, but despite repeated reminders, these witnesses were not questioned.

### 11. The **Reznichenko** Case:

The investigation had never interviewed for the record one of the main witnesses in the case of Roman Makhnyk, a colleague of I. I. Reznichenko, as well as a Deputy of the City Council of Soledar. Although it was he who found the body of I. I. Reznichenko and, later on, in his own words, repeatedly insisted on his questioning as a witness, as well as on contributing important materials to the case. These requests were ignored by the investigation.



The dead body of Ivan Reznichenko was found in this salt mine

### 10. The **Victim from Pisky** Case:

Since the submission of the statement about the offense none of the priority investigative actions were taken, for example, over a year and a half the victim had never been questioned, no forensic-medical examination was held despite the existence of serious injuries.

In one of the studied cases of a victim of the abduction by the militants of the so-called “LNR”, the forensic-medical examination was prescribed one and a half years after the submission of the victim’s statement about

her abduction. Of course, during this time, traces of the beatings have disappeared. Moreover, in a private conversation the doctor asked the victim, “why should she need it”, referring to her insistence on the need to investigate the case.

## Neglecting the duty as for thorough collection of all possible physical evidence.



Basement of the Kostiantynivka City Council (Donetsk Oblast) in December 2014. It looks like law enforcement did not collect any evidence of unlawful detention of people in here

### 12. The Shabratskyi Case:

according to the materials of the case, There was not carried out an obvious ballistic examination to determine whether it was the Shabratskyi's automatic gun to have released the bullet found at the crime scene, whether all cartridges were released from this very weapon, and if not – then from which one?

In a number of cases, investigators ignored the need to collect possible evidence in the places of unlawful detention of individuals who were captured prisoners. At least this

concerns Slaviansk (*former premises of the SBU*), Lysychansk (*JSC "Lysychansky Glass Factory"*) and Kostiantynivka (*premises of the Executive Committee*), which were visited by the mobile teams of researchers.

## The probable destruction of information base of possible evidence

### 9. The Podushkin Case:

Mobile team received an information that all documentation on the Kramatorsk TDF (*Temporary Detention Facility*) was destroyed. After all, it was specified in the log books, when and who of the employees of the MIA entered on duty in the time the city was under the rule of the illegal armed groups.

Since an example of such actions we met only once, it is difficult to make generalizations. However, noteworthy is the fact that it is about the alleged attempt to hide the crimes of the representatives of the law enforcement bodies themselves, which were committed exactly in the period of the occupation of the settlement by the illegal armed groups.

## Designating status of witnesses to the victims, which creates a significant limitation in their procedural rights, but simplifies the work of investigators.

For such an "artificial" change of the procedural status, the investigators resort to different techniques. For example, divide a single criminal proceeding into several different ones, conduct extra

interrogations of the person within the related proceedings. Procedural status of a witness compared to the procedural status of a victim considerably narrows the rights of individuals, in particular, excludes the possibility of submitting petitions,

familiarization with the materials of the case, a refusal to give evidence without the risk of being punished for such refusal. Such actions, in our opinion, **violate the fixed in the ECHR's principle of engaging the victim into the process of investigation.**

## Falsification of possible evidence

Instead of conducting transparent and qualitative investigation of crime in some cases law enforcement bodies resort to a strategy of de-facto destroying the materials of criminal proceedings—when, despite the availability of proper information, in the procedural documents the investigators deliberately do not record the data relating to the suspect’s identification, who the victim directly points at. Instead, some neutral wordings from the stock of generic common formulations are used: “unidentified persons”, “policeman”, etc. According to the authors of the study, there are grounds to regard such actions to be an attempt of falsification of evidence and materials of criminal proceedings—in general.

One of the victims of abduction by the militants of the “LNR” in the course of investigation, informed the investigator that she recognized a number of individuals who had been involved in her abduction and applied to her physical violence. One of them is still in the city. As the woman managed to find out herself, it is a former Commander of the Patrol-Sentry Service of the MIA. “After the liberation of the city he again worked in the police, walked around with an automatic gun and in the police uniform. Now he is just fired, and he works as a taxi driver” the victim says. She also claims that in the summary of her interview the investigating officer did not specify this person’s last name, did not indicate that the victim recognized him, but mentioned about him as of an unidentified policeman. In reply to a question about why he does not mention the name, the investigating officer referred to his unwillingness to “engage his colleagues” and that “he would not get away with it”. One of the victims, which was a captive of the so-called “DNR” in Slaviansk, recognized the policeman who took part in his capture, but this fact was not entered to the summary of interview.

From the victims in separate criminal proceedings the researchers became aware of attempts of the de facto falsification of evidence base **in the form of planting munitions or weapons that is claimed by the victims themselves. In such cases, the issue is not about investigating crimes in which these persons were recognized as victims, but about facts of pressure on them by “unknown persons”.** This behavior significantly reduces the confidence of the injured persons in their righteousness and legal safety and discredits them.

### 7. The **Nazdrychkin** Case:

The car of V. M. Nazdrychkin in the night 21.11.2014, according to representatives of the injured party, was blown up for a re-enactment of the terrorist attack on the checkpoint by the order of the Commander V. of the “Kiev-2” battalion, what was recorded on video. This fact is not examined in the case of the murder of Nazdrychkin, but is investigated (*more precisely – should be investigated, but in fact it is not under investigation*) in a separate proceeding.



Screenshots of the news video about the explosion of the car of Nazdrychkin

### 1. The **Gladchenko** Case:

during the first visit to O. O. Gladchenko of armed with assault rifles people in military uniform, they have said about the need to inspect the warehouse facility seemingly to appreciate the possibility of storing weapons there for the AFU. Having entered there without presence of the owner, one of the armed men came out with 2 grenades in the hands, accusing the owner in possession of weapons for illegal armed groups.

### 12. The **Shabratskyi** Case:

the parents of a murdered Aydar combatant shortly after the death of their son were visited by persons who introduced themselves as the prosecution officers. As a result of their inspection of their home and yard (*lawful warrant for conducting a search they did not have, but they got verbal consent for the inspection from the scared owners*) they allegedly found ammunition there, where, according to Shabratskyi, it never was before. The victim lawyer, when trying to find out within which proceeding this visit took place, was informed that in the framework of criminal proceeding upon the death of Shabratskyi no such search was conducted. The fact the inspection had not been procedurally fixed. The family itself believes that the “finding” these ammo rounds was aimed at discrediting their deceased son.



## The use of the status of a procedure supervisor for “inhibition” (delay) of the terms of pre-trial investigation

In public prosecutor’s offices of Donetsk and Luhansk Oblasts there has not been any rotation of prosecution employees, who carry out procedural guidance of a pre-trial investigation (*with the exception of the Military Prosecutor’s Office*). Probably, it is this fact that affects their creating such artificial obstacles as procrastination of the study of criminal proceedings materials or the terms of concordance of investigative actions and producing a notice of suspicion. Such a tactic is used, as a rule, in cases with investigating officers who come into the ATO zone from other areas and are interested in uncovering the crime and punishment of the perpetrators that leads to a situation when the term

### 1. The Gladchenko Case:

according to the victim and his representative, at some period of the investigation, after appearance of a new Head of Investigative Dept., the case got off the ground, however, the obstacle to further investigation became a regional Prosecutor’s Office. In particular, on the petition of the victim regarding the transfer of the investigation to the Starobilsk Police Department (*due to the impossibility of an objective investigation in the Bilokurakino PD*) the regional Prosecutor’s Office did not even care to provide a response.

of their business trip expires and for the Prosecutor’s Office taking a proper procedural decision is no longer needed.

Such actions are examples of the obvious **violation of the principle of timeliness and the absence of the delay.**

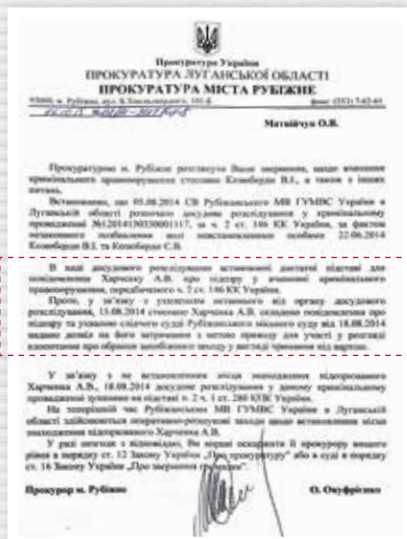
## The use of the unavailability of investigators’ access to suspects as a pretext for the non-conduction of the necessary investigative actions

### 3. The Koziuberda Case:

investigation of the proceeding concerning abduction most actively occurs in the part concerning the very episode of seizure of the victim in hostage. However, this is not the only thing that deserves attention in his case. After the abduction, he was taken to the headquarters of the Prizrak battalion, where he was subjected to torture, including, in his words, by the citizens of the Russian Federation. However, as the official response to the request for information as well as communication with the investigating officer may indicate, this is no longer investigated by the law-enforcement bodies. According to the victim himself, position of the investigation is the following “There is no one to investigate. All are on the other side. At the Glass Factory there were almost only the Russians, the Chechens, we cannot get anyone at all.”

In some cases the unavailability of investigators’ access to suspects becomes a pretext for failure to fulfill their duties in further investigation and determination of other persons involved in the offense.

In the worst outcomes **the culprits are “appointed” (and are announced on the wanted list) the well-known odious persons who are in the non-government controlled areas.**



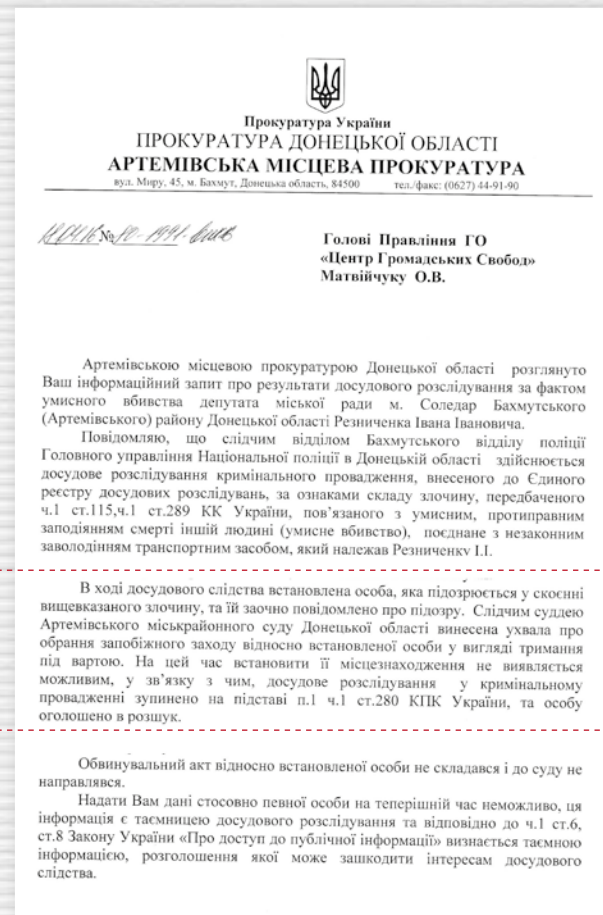
Response of the Rubizhne local Prosecutor’s Office (Luhansk Oblast) to the CCL’s request, which tells about the fact that one of the persons suspected in the abduction of Mr. Koziuberda – Mr. Kharchenko, is accused of committing a crime under Art. 146, p. 2 of the Criminal Code of Ukraine. At the moment he is put on a wanted list, since his location remains unknown

## 11. The Reznichenko Case:

First, on suspicion of the murder of I. I. Reznichenko two employees of SE Artemsil were detained, who brought Roman Makhnyk to the mine, where he found the body of a former ally. The Head of the Interior Ministry Head Office in Donetsk Oblast Viacheslav Ambroskin then reported<sup>15</sup> about the detention, but of only one person. In this case, it was claimed that it is about “a militant of the “Donetsk people’s Republic” terrorist organization”. According to our information, the second person was immediately re-qualified as a witness. Now, according to the same sources, it is in the lists of the missing persons, and de facto is in the Russian Federation, where his relatives reside. Later on, through allegedly absence of evidence, the second suspect was released. The charges against him were re-qualified as early as in spring 2015 from the intentional murder (part 1 of art. 115 the CCU) to part 1 of art. 396 of the CCU (“Not preliminary promised concealing of a grievous or extremely grievous crime”), he was released from custody under partial home detention. At that, the allegations in the action as a militant of a terrorist organization, which were announced in the statement of the Head of Police of Donetsk region, were not even expressed in officially produced to him indictment. Instead, wanted on suspicion of the murder of I. I. Reznichenko (under art. 115 of the CCU), according to our sources in law enforcement bodies, is Arsen Ivanovych Pavlov, better known as an active participant of IAG with the call-sign “Motorola”. At that, no evidence of his involvement in the murder, according to the monitors, was present in the case, and the available evidence regarding the primarily detained employees of “Artemsil” were ignored. Judging from it all, it is “Motorola” who is meant in the response to our query of Bakhmut local Prosecutor’s Office: “In the course of pre-trial investigation there was established identity of the person suspected of committing the above offense, and in absentia the person is notified of the suspicion... decision on precautionary measure for the established individual in the form of detention. To establish location of this person is not currently possible ...”. Here it is worth noting that the Artemsil State Enterprise keeps constantly getting in the center of corruption scandals, it was also associated with high ranking officials of the former “Party of Regions”- the Kluiev brothers. In addition to that, the murdered, I. I. Reznichenko, had a conflict with the leadership of this company for which he had been working for all his life and had been heading its Trade Union.

Response of the Artemivsk local Prosecutor’s Office (Donetsk Oblast) to the CCL’s request for information about issuing a warrant for the arrest of the person suspected in murder of Ivan Reznichenko. The document claims that this person (without disclosing the name) at the moment is put on a wanted list, since his location remains unknown. A friend of Reznichenko, who conducted his own investigation, claims that law enforcement falsified the evidence and deliberately accused one of the most ill-famous “DNR” militants, who is inaccessible for the Ukrainian justice

15 [www.ukranews.com/news/153809.Militiya-zaderzhala-boevika-DNR-po-podozreniyu-v-ubiystve-deputata-Soledarskogo-gorsoveta.uk](http://www.ukranews.com/news/153809.Militiya-zaderzhala-boevika-DNR-po-podozreniyu-v-ubiystve-deputata-Soledarskogo-gorsoveta.uk)



## 6. The lack of will or fear of local law enforcement officers in investigating the crimes of their former/current co-workers or military

This factor could be attributed to the paragraph of “General Problems of Criminal Justice”, however, we consider it necessary to draw special attention to it.

As you know, the occupation of the individual areas of Donetsk and Luhansk Oblasts was accompanied by massive involvement in the unlawful actions of law enforcement agencies (*especially police*) and the participation of their employees in illegal armed groups. Quite often it were they, who were performers of abductions and torture of civilians. In the stories of many of the former prisoners one can find episodes of violence that are “traditionally” used by employees of the Internal Ministry agencies in Ukraine. Some of these officers today are mentioned in the NPU’s lists of wanted, namely in the section of “Wanted Participants of Illegal Armed Groups”<sup>16</sup>.

After the return under government control of part of the occupied territories, the society confronted with the problem of the investigation of the activities of these persons to be carried out by their former colleagues. The Monitoring group is aware of several cases where the present representatives of the NPU frankly say that they do not intend to investigate the criminal acts of their yesterday’s colleagues.

An additional argument is the fact that the situation in the liberated territories is far from stability, for several years, there periodically appears unverified information that a certain city (*village*) will again be invaded by the illegal armed groups (*IAG*). This is why **local law enforcement agencies and even courts often try to psychologically adapt to the situation, so that in the future they will not occur among the “enemies” of those who in the long run will get the power in the region.** There are cases known when judges who carry out judicial proceedings in the Ukrainian government controlled area, on weekends keep visiting their families living in the occupied territory. In such circumstances, it is difficult to expect bold and independent decisions from them.

### 9. The Podushkin Case:

For all the time of stay in Temporary Detention Facility (*TDF*) in Kramatorsk, from a window of his cell D. V. Podushkin saw persons in balaclava helmets who guarded the premises of TDF, were lining up on the drill field. They were read their daily tasks, they were armed, well-informed of the premises details and performed their functions professionally. The victim has no doubt that the mentioned individuals were Interior Ministry employees, whose place of service was Kramatorsk TDF. On the fact of the abduction of D. V. Podushkin, on July 12, 2014, a pre-trial investigation was launched under art. 146 part 2 of the Criminal Code of Ukraine (“*Illegal imprisonment or abduction*”) and 365 part 1 of the Criminal Code of Ukraine (“*Abuse of power or official authority by a law enforcement officer*”). Given the fact that with regard to the police employees, the investigation is conducted by the bodies of the Prosecutor’s Office, November 12, 2014 there was launched a criminal proceeding of the Prosecutor’s Office in Donetsk Oblast “on the fact of possible unlawful actions of the officers of Kramatorsk City Dept. of Interior Ministry Head Office in Donetsk Oblast”. Therefore, the investigation concerning employees of TDF is lead by their own colleagues, with respect to personnel of the whole Interior Ministry institution, rather than to individuals.



## 7. The **Nazdrychkin** Case:

According to representatives of the injured party, despite the availability of direct testimonies about the involvement the leadership of the battalion "Kiev-2" in the murder, law enforcement authorities have not tested a version as for their involvement in the commission of crime, primary investigative actions were not conducted, the quality of the examinations is unsatisfactory. Despite the presence of specific evidence and witnesses, there are no suspects and detained persons in this case. Initially the information about the murder of Nazdrychkin was voiced by the former volunteer of the "Kiev-2" battalion Dmytro Tsvetkov. In his own words, he was forced to emigrate in order to avoid physical altercation because of his disclosure of information about the abuses of the battalion: ranging from bribes at checkpoints to the mentioned killing of a civilian<sup>17</sup>. According to him, after his appeal to the Interior Ministry, the GPU and the President's Administration there was not any reaction and no checks were carried out.

**At the same time, local law enforcement agencies are either afraid or unwilling to investigate some crimes committed by the Ukrainian forces of ATO.**

During the study monitors received information about a likely case of physical violence on the part of the representatives of the law enforcement agencies against the injured person who filed the application about the kidnappers from among the volunteers.

## 10. The **Victim from Pisky** Case:

Investigating officer of Druzhkiv Police Office in the Donetsk Oblast was not able to reach the victim A. over the telephone, and therefore gave the order to police of Dobropillya to establish his location. After that, in April 2016, in his own words, police officers of Dobropillya arrived to the home place of A. and ordered to pack his personal belongings ("pack your stuff and out you go"). He refused, locked in the house and did not open the door. After that for two weeks he had been living at his parents'. And when he returned home on April 19, on the way to a shop he was stopped by the same police officers, who came to his home. They beat the man (*strikes and hits delivered to liver and kidneys*), blaming him for being a "separatist" and daring to complain about his captors. At that, an investigating officer in the case, who gave instruction to establish A.'s location, had never contacted the victim further on.

**With a lack of independence of the investigation one can also associate the challenges of the definition of jurisdiction that in many criminal proceedings is controversial.** In a good number of cases, the investigations of crimes allegedly committed by the military, are carried out by National Police, and not by military prosecutors. Most investigators try to explain this situation by the overload of Military Prosecutor's Office. But, at the same time, sometimes there occur situations when establishing jurisdiction of NPU, certain crimes are artificially diverted from the context of the armed conflict of the ATO zone and are transferred to the category of domestic crimes. There are known cases when with the use of the procedural means of "dubious legality" the law enforcement agencies change the status of criminals from active military personnel to "former" military, i.e. ordinary citizens.

It can also be about the cases, where the accused are representatives of other bodies participating in ATO and take part in combat operations. For example, the State Border Guard Service of Ukraine (*hereinafter referred to as SBGS*). There is reason to believe that the cases against them are investigated same way inefficiently.

*February 15, 2015, close to the city of Girnyk of the Donetsk Oblast, six servicemen of the 10-th mobile border squad of Operational Military Dept. "Velyka Novosilka" of the SBSU killed a local taxi driver Roman. That day he gave a lift to some AFU servicemen to their military base. Immediately after disembarking of the passengers near the military base the servicemen of the SBSU opened gunfire in the vehicle with intent to kill. As a result of the received gunshot wounds the victim died on the spot, one of the military passengers was injured. According to the lawyer of the family of the deceased Yulia Naumenko, the case file says that employees of SBSU "took them for separatists" and tried to protect themselves, though, according to the lawyer, "there was no misconduct on the part of the taxi driver or his military passengers". The servicemen of AFU held in the case*

One of the cases of a person disappearance and abduction of a vehicle, the suspect in which is the former combatant of Aydar battalion, is investigated by the investigating officer of the Interior Ministry Head Office of Ukraine in Kreminna, Luhansk Oblast. As the investigating officer said herself during our communication, this is due to the fact that at the time of committing the crime the suspect was a volunteer and officially did not belong to any military unit. Therefore, while determining jurisdiction, the fact that at the time of committing a crime (August 2014) in this region there was armed conflict in progress, was not taken into account.

## 7. The **Nazdrychkin** Case:

criminal proceeding as for the murder of a civilian person, contrary to the CPC, for a long time had been investigated by the police units, who were under the influence (*bullying*) of Kiev-2 battalion located in Volnovakha, Donetsk Oblast. This is the battalion, on which the representatives of the injured party lay the responsibility for the death of V. M. Nazdrychkin.

## 10. The **Victim from Pisky** Case:

The Military Prosecutor's Office does not carry out any control or procedural guidance in this case. According to the representatives of the injured party, it happens this way in most cases, in which volunteers were probably involved.

*of a murdered taxi driver as witnesses, say that they heard no issues from the border guards. SBSU instead, claim that they repeatedly warned the passengers of the car that they are going to open fire on them. The Military Prosecutor's Office of the Donetsk garrison February 17, 2015 launched a proceeding on a fact of negligent handling of a weapon and murder (part 2 of article 414, item 1 of part 2 of article 115 of the CCU). The perpetrators were established but no one was produced a notice of suspicion. At the*

*moment the case is closed on the ground of corpus delicti in the criminal offense on the basis of the disciplinary investigation conducted by SBSU. Ruling on closing the case is challenged by a lawyer of the family. The latter claims that there were attempts on the part of SBSU to coax the family of the deceased "to compromise" and abandon claims to the border guards. Currently, the Court of Appeal of Donetsk Oblast reversed the resolution on the closure of criminal proceedings and sent the case to a pretrial investigation.*

**In addition, in some cases doubtful also is the criminal legal qualification of the offenses under the current CCU.**

The problem of jurisdiction also affects qualification of crimes associated with abductions and torture committed by the members of the IAG of the so-called “DNR” and “LNR”.

«VostokSOS» Charitable Fund is litigating in courts transferring by the Security Service of Ukraine the statements about the abductions and torture of civilians by the militants of the so-called “DNR” and “LNR” to the Ukrainian National Police. At that, the SBU did not pay attention to the fact that the performers of crimes are terrorist organizations, and therefore ignores the qualification under art. 258-3 of the CCU (“Creation of a terrorist group or terrorist organization”), which belongs to the SBU’s jurisdiction. “VostokSOS” already has several precedents of the positive decisions of courts, which would obligate just the Security Service to enter data on the relevant crimes to URPI and, accordingly, to carry out pre-trial investigation in these cases. The activists say that for them such precedents are important, in view of, in the first place, the distrust to the police and its ability to investigate such cases professionally and independently, and secondly, because in view of the presence of signs of the crimes stipulated by art. 258-3 of the CCU, it is the legal duty of the Security Service of Ukraine. Thirdly, through the experience of investigating the Maidan cases, in particular, it is about the creation of, within the General Prosecutor’s Office of Ukraine, the Department of Special Investigations, which adheres to a comprehensive approach to the investigation of the events of end 2013—beginning 2014, as opposed to a long and inefficient investigations as for each individual victim by different investigators without any coordination between them.

A shortcoming in the form of “handling of corporate solidarity” among law enforcement agencies takes effect not only on the territory of Donetsk and Luhansk Oblasts, but also in the adjacent ones. For Example, in Dnipropetrovsk Oblast.

## 1. The **Gladchenko** Case:

armed assault, threats address to the victim and his family, unlawful trespassing into the territory of his private property and brutal beating – all was qualified by the local law enforcement authorities as “Forcing to performance or non-performance of the civil law of obligations” (article 355 of the CCU).

## 8. The **Petrovskiyi** Case:

After the disappearance of her husband, his wife called the police and filed a statement about the missing person. O. V. Petrovskiyi was informed about it by the policemen themselves of the Dnipropetrovsk District Police Department in the village of Yuvileine, Dnepropetrovsk Oblast, who called him after his release and asked to visit them and give evidence. According to the statements of the victim, law enforcement officers revealed no enthusiasm when it was found out what was the cause of the disappearance of the man. However, he was questioned and promised to continue the investigative actions later on, but soon asked the victim to come again. During intercourse the same law enforcement officer, who interviewed O. V. Petrovskiyi earlier, asked him to refuse from the testimony, referring to the fact that a man supposedly at the moment “was in a state of fatigue and could not think properly.” “As a result of fears that the police of the Dnipropetrovsk District Department can act in conjunction with the captors, I wrote a statement of rejection of the evidence,” tells the victim himself. The statement on the commission of a criminal offense was filed by O. V. Petrovskiyi to the Internal Ministry Head Office of Ukraine in Kiev at the end of 2015. In January 2016, his case was transferred to Dnepropetrovsk, to the place of the crime scene. The victim was informed of that by the investigating officer of the National Police Head Office of Dnipropetrovsk Oblast. Since then, the victim has not been informed of any investigative actions.



# 6.1. Problems in investigation of non-combat casualties

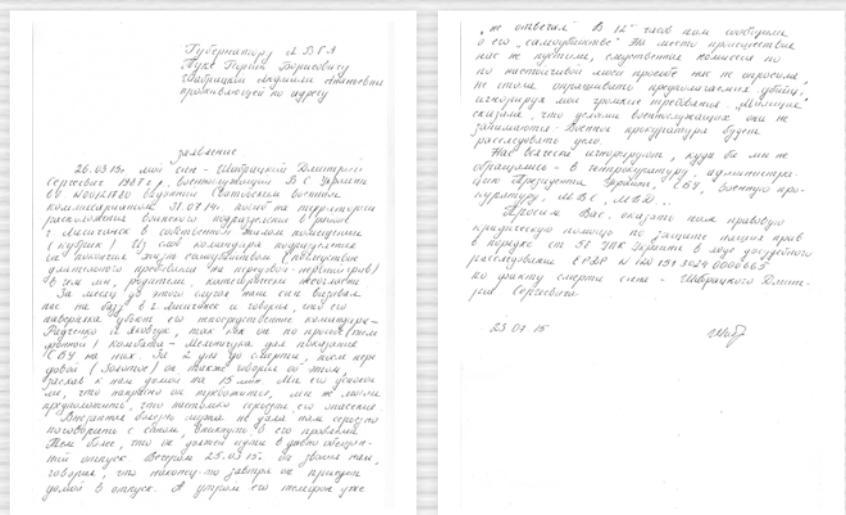
With the lack of will on the part of law enforcement agencies or the presence in them of fear for their safety or employment status one can associate also the improper quality of investigation of non-combat casualties<sup>18</sup>.

Despite the fact that in this case the issue is not about the civilian population but military personnel, for researchers it was important to establish that this category of deaths sometimes has signs of intentional murders (to which there can be involved persons who commit also crimes against civilians). Characteristically, these events are also investigated in non-transparent and ineffective way. In particular, it is about the cases where the death of a serviceman are preceded by his remarks or activity aimed at fighting corruption, unwillingness to participate in illicit schemes or other forms of abuse or violations of the law, what is happening in the area of ATO, as well as threats to disclose such information or to bring it to the attention of competent authorities and require a due investigation. About conflicts between servicemen in the area of ATO on this very ground volunteers have repeatedly reported in social networks. Sometimes, this leads to serious clashes with the use of weapons. "In each unit there are always those who try to resist looting and "bespredel" (lawless behavior beyond any moral limits). I know cases when between the men were incidents of exchanging fire. Some tried to stop others from robbing someone else's property," writes one of the female volunteers<sup>19</sup>.

The authors of the Report believe that exactly to similar conflicts there can be related two cases which got into the focus of attention of the monitors and which are being investigated improperly. According to the authors of the Report, the reason for this is the context of the offense.

## 12. The Shabratskyi Case

According to the testimony of his fellow servicemen in the battalion, Dmytro had conflicts with the leadership of the platoon, repeatedly intended himself (and called to join others) to report abuse of the leadership to competent authorities. According to his parents, he even gave evidence against these people to the representatives of the Security Service of Ukraine. Many of his former colleagues, with whom the human rights defenders had to communicate, and who stand out entirely anonymous, believe that it was exactly murder, not a suicide, a version of which is supported by the investigation. They also confirm that this military subunit violated the rights of civilians that caused in particular their own decision to leave the battalion. However, they do not agree to talk about it publicly, believing that this can expose them to a serious danger. The situation is complicated by the fact that the individuals who de facto carried out the management of this subunit at the time of the Shabratskyi's death, are associated with local oligarchic financial circles, and, probably, because of exactly this, the investigation, carried out by the local law enforcement officers, is inefficient and being inhibited.



One of the numerous appeals of the Shabratskyi's parents to the state authorities with the demand to conduct a proper investigation into the suspicious death of their son

18 The phenomenon of non-combat casualties accompanies any war. Ukraine is no exception. As of the end of Summer 2015 (starting from April 14, 2014), the Ministry of Defense of Ukraine registered www.theinsider.ua/rus/politics/55f15a4fefef8/528 deaths of servicemen not related to combat operations. Among them: suicide - 145, accident-killing - 125, intentional murders - 92 (including by military - 73, by civilians - 19), as a result of road accident - 80, a violation of safety rules - 72, other cases - 14. At the end of January 2016 the General Military Prosecutor of Ukraine Anatoly Matios stated that the number of non-combat casualties during the ATO amounted to more than a thousand persons, i.e. approximately half of the total losses of military personnel (total, according to the General Staff of the AFU, in the list of the deceased there are 2673 servicemen, including missing in action). www.dt.ua/UKRAINE/za-chas-ato-nebovovi-vtrati-zsu-perevishchili-1-tisyachu-osib-matios-198206\_.html, www.dt.ua/UKRAINE/za-chas-ato-zaginuli-1915-ukrayinshih-viyskovosluzhbovciv-185322\_.html

19 www.facebook.com/o.reshetylova/posts/1043950868970401

The disappearance of combatants of the 72nd Brigade, and later on finding one of them dead, probably one can associate with deployment of "Kiev-2" Battalion next to one of the Brigades.

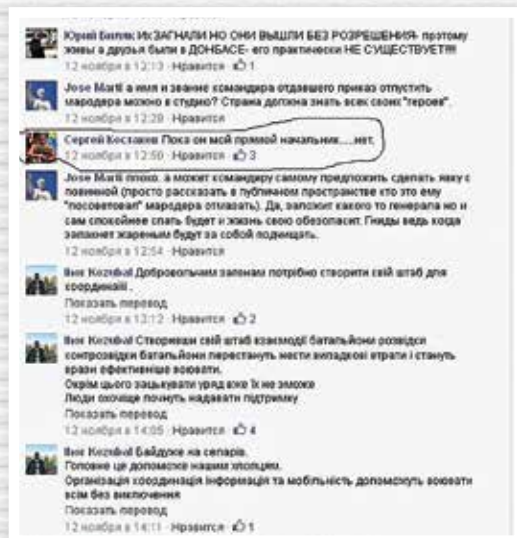
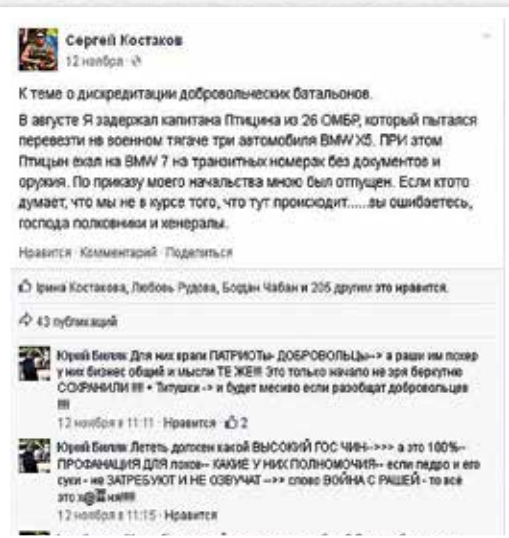
Viktor Anatoliiovych Petrenko, combatant of the 72nd special mechanized infantry brigade, disappeared in the night of October 08, 2014 from the location of the military base in the city of Volnovakha, Donetsk Oblast. He was dressed for sleep, and had no intention to go out. Simultaneously with Victor, in part of the base where there were detected no enemy SIGs (subversive-intelligence groups) a machine gun disappeared. At this time, Victor is considered missing. In the press his relatives who do not lose hope for finding their loved one, publish notices, which also contain information about the probable murder of Petrenko by other military. "His fellow servicemen reported that he had a conflict with the military from the B0136 military base, who temporary were on the territory of their base. They threatened him with physical reprisal. For what reason is unknown. And on October 9, after they left the location of their base, his brother disappeared too. His fellow servicemen gave official testimony, that the military of the mentioned military base can be involved in violent disappearances and even murder of Viktor".<sup>20</sup>

20 www.fakty.ua/208592-polevaya-pochta-faktov

#### 4. The **Kořakov** Case:

S. Yu. Kořakov became quite famous well before his disappearance, since he published messages in the social networks that might be an indication of a gathering conflict with his leadership (*it is about the Kiev-2 Battalion, which became part of the 72nd Brigade*). This refers, in particular, the charges against marauding. On the night of 22 to 23 November 2014 Sergei was lař seen alive at the checkpoint building at the 177th km of the road Slaviansk-Donetsk (*Volnovakha*), in which at that time the soldiers of the Kiev-2 Special Patrol Service Battalion. Sergei was seen beaten and handcuffed to a radiator. The witnesses, who had already given evidence in the case concerning the murder of Sergei, according to monitors, are subjected to constant intimidation and pressure. Other witnesses refused to give any testimony until this investigation will be not in the proceedings of the Police of Donetsk oblast, because of moral pressure from persons concerned. According to the lawyer in this case Yevgeniya Zakrevska, interviewing witnesses was focused not on the clarification of the circumstances of the offense, but on the clarification of the list of other potential witnesses to this crime. In this case, the leadership of Kiev-2 Battalion Bohdan A. Voitsekhivskiyi (*call sign Sotyi*), Yaroslav M. Kovalenko (*call sign Utios*), Viacheslav Kriazh (*call sign Makhno*) for a long time hadn't been removed from their pořts. In six months of carrying out pre-trial investigation on the fact of murder of S. Yu. Kořakov no person was produced a notice of suspicion.

Screenshots of the Facebook page regarding the killed volunteer fighter Kostakov. In his posts he was accusing his direct commanders of smuggling.

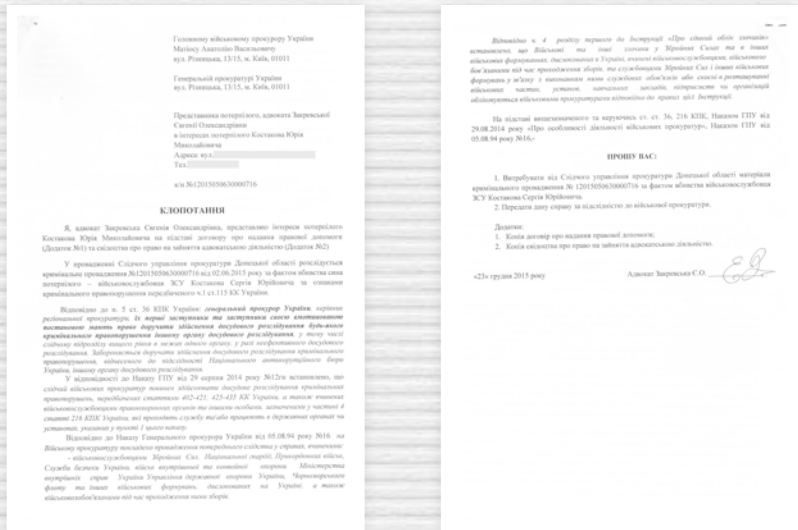


## The investigation of the studied events that are associated with a non-combat casualties in the ATO zone have specific flaws:

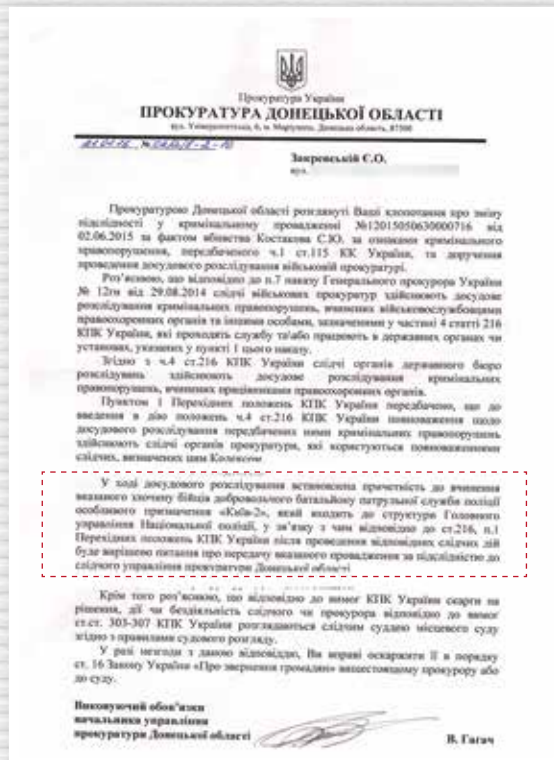
For example, contrary to the prescriptions of CPCU, the event is not investigated by Military Prosecutor's Office that would be fair to both the Kostakov case and Shabratskyi case. However, in the latter case, the Military Prosecutor's Office in Luhansk Oblast performs procedure supervision in the criminal proceeding.

### 4. The Kostakov Case:

the Military Prosecutor's Office did not even took upon itself the procedural guidance in this case, although there is a number of reasons to believe that precisely the military are involved.



Request of lawyer Zakrevska and response of the Prosecutor's Office of Donetsk Oblast claiming that investigative bodies established the involvement of the Kyiv-2 battalion in the killing of Kostakov. Despite this fact, Military Prosecutor's Office rejects the requests on investigating this case.





The lack of a disciplinary investigation of facts of deaths of servicemen.

#### 4. The **Koštakov** Case:

A disciplinary investigation as for possibility of the involvement of the leadership of the Kiev-2 Battalion in the death of Koštakov and other unlawful activity has not been carried out;

#### 12. The **Shabratskyi** Case:

On the request for information, the lawyer of the parents of the victim in this case was informed that the disciplinary investigation on the fact of the Shabratskyi's death was not conducted. Accordingly, any verification of the fact of possible involvement in the case of the soldiers of the battalion, in particular R. and Ya., at who the parents of the deceased expressly point referring to the repeated complaints of their deceased son about threats on the part of these individuals.

Ignoring by the pre-trial investigation authorities the requirement for immediate and urgent investigative actions;

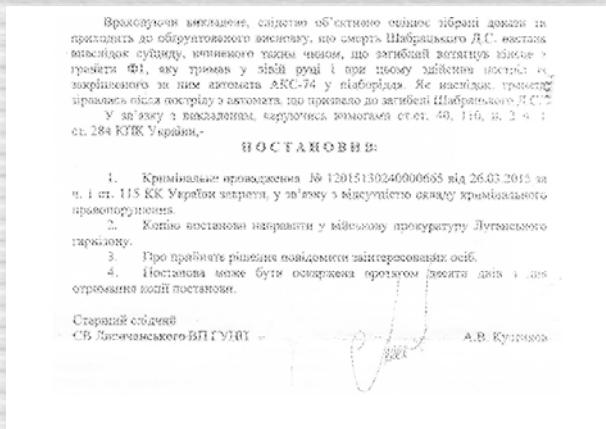
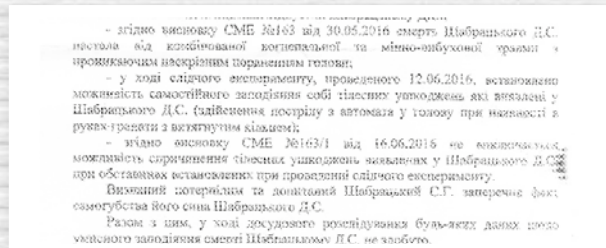
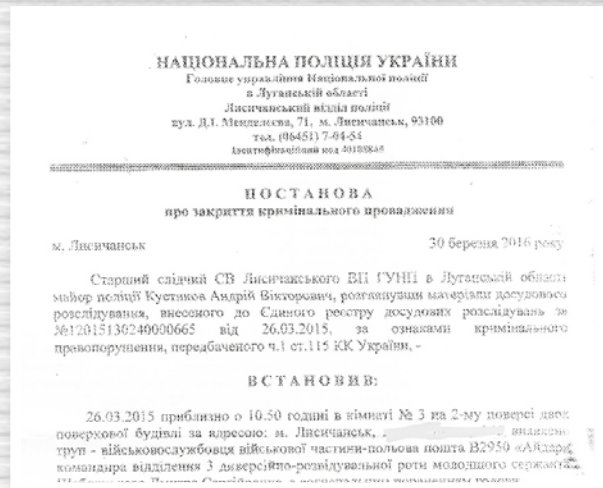
#### 12. The **Shabratskyi** Case:

in the course of investigation there has not been established, from which weapon the bullets and cartridges found at the place of Shabratskyi's death were fired. According to the materials of the case, on site there were found 3 cartridges caliber 5.45 mm and 2 bullet cores.

Pre-mature closure of a criminal proceeding, despite the absence of sufficient grounds for this

## 12. The Shabratskiy Case:

Already at the stage when the Report was completed, the monitors became aware of the closure of a criminal proceeding on the fact of the murder of Dmytro Shabratskiy. At that, even the resolution itself on the closure of the proceeding contains referring to testimonies of the witnesses that contain discrepancies in the extremely significant detail, for example, as to where the Kalashnikov, with which Shabratskiy allegedly caused his death, was kept (one of the witnesses cited in the resolution, said that the AK gun lay "on the chest of D. S. Shabratskiy's ... barrel to his face", another claims that when the corpse of a soldier was found, the weapon "lied alongside nearby"). In addition, although the resolution on closure of the criminal proceeding indicated "the lack of information about the intentional causing of death to D. S. Shabratskiy", it did not take into account the fact that, according to the testimony of parents the deceased, the day before the death of their son he called his father and said that his life is at risk and that he can get killed. At that, the investigation did not examine the telephone traffic of the deceased. The investigating officer did not take into account the fact that shortly before the Shabratskiy's death he was interviewed by SBU as for the probable crimes of the commander of his company.



Resolution of the National Police Office in Luhansk Oblast about the closure of the criminal proceedings on the Shabratskiy's death. They refer to the fact that the law enforcement didn't find any evidence of the violent death of Shabratskiy. The latter is obviously in contradiction to the reality. After the lawyer's appeal, the court dismissed the decision of to the police to close the case. Investigation has to be continued.

The lack of security guarantees for witnesses.

## 12. The **Shabratskyi** Case:

Former soldiers of the company, in which the Shabratskyi serviced, in the communication with the monitors refuse to comment on the cause of "Aydar combatant's" death referring to the danger to their own life. Some of them openly say that it was murder, not a suicide, however, to speak in detail about the events that caused the death of a soldier they refuse. Even those of them who have moved on to other units of the AFU or got discharged and are resid in another region of the country, believe that in case of publishing their comments, they and their families could be subjected to danger.



## 7. The low level of confidence of crime victims to the law-enforcement system and investigators

A low level of confidence of crime victims and their representatives to the law-enforcement system is characteristic of the investigations of all crimes without exception regardless of where and by whom they are committed. Quite often people refuse from the idea to submit a statement of offense, which completely eliminates the likelihood of effective investigation. Some people do not submit statements, considering law enforcement authorities inefficient by default, some people are wary of their integrity and impartiality. Even if the statements are submitted, the majority of victims, who the monitors communicated with, are skeptical of the ability of the law enforcement officers to adequately investigate crimes, as well as of the ability of the judiciary to render a fair verdict.

Distrust regarding the investigation concerns both crimes committed by the IAG of the so-called “DNR/LNR” and the Ukrainian forces of ATO.

According to the law enforcement officers themselves, interviewed during the study, the existing distrust affects also the efficiency of conducting investigations. *For example, witnesses refuse to assist the investigators in providing relevant information: those who were relocated from the areas occupied by the illegal armed groups – because of distrust, and the investigating officers arriving to the ATO zone for a short term – due to the fact that they don’t see any point, because soon these law enforcement officers will go.*

Even in the cases, when a criminal case is investigated and brought to court, the injured party complains about poor quality of investigation and does not exclude the potential impact of the suspects or their relatives on the investigators.

Valeriy Beshenko, a volunteer, activist, former Mayor of Pryvillia, the Lugansk Oblast, was abducted from his own office in Lysychansk, in his own words, by a platoon of soldiers of Aydar battalion stationed in Lysychansk. The abduction took place in July 2014, after return of Lysychansk under Ukrainian control, exactly on the day when the session of the City Council of Lysychansk was scheduled, during which the facts regarding the implication of local financial and industrial groups and their henchmen to capture of the city as well as a requirement for a dissolution of the Council was to be declared. V.I. Beshenko was to take floor during this session. The captors grabbed his phone devices, put two Balaklava helmets on his head, delivered him to Polovynkin. On the motives of his detention there were different versions voiced, for example, “we possess information that you are in danger, you have to go with us”, and “there is information that you are involved in separatism”. He was returned to the city on the same day, after a session of the City Council had gone. V.I. Beshenko personally knew one of those who abducted him. It was he who later told him that after participating in Beshenko’s abduction he came to his commanders, accusing them that “with our hands you pull round patriots, earning money on this.” Beshenko did not submit a statement to the police because he does not believe that “someone is likely to sort out this bustle.”

### 10. The **Victim from Pisky** Case:

A. decided not to submit a statement on the beating by law enforcement officers because of fear of revenge from their side.

### 2. The **Doroginskyis** Case:

The representative of the person recognized as a victim in the case, believes that the suspect, having a solid financial resource, makes attempts to exercise his influence on the investigation. In addition, the woman believes that conducted polygraph examination of both defendants was falsified. After petitioning by the Military Prosecutor’s Office, the court appointed a repeated examination.

## 8. Failure to comply with the criterion of sufficient public awareness

Informing the public of Ukraine concerning crimes committed in the area of ATO, is done selectively – exclusively within the framework of those cases for which there is political expediency. Partly this approach is due to objective reasons associated with the investigatory privilege. At the same time, this state of awareness of society is usually the result of an atmosphere of secrecy and reluctance to allow the public to oversee investigations of even significant accidents. This was particularly evident after the publication of the material, dedicated to the citizens of Russia, detained in Ukraine for accusations of terrorism and/or participation in illegal armed groups. Qualitative information on such cases (*even as for Russian citizens who take part in the fighting on the side of the so-called “DNR/LNR”, not to mention citizens of Ukraine accused in the crimes committed in the Government controlled areas*) are

replaced with information throw-ins that are winning in terms of news promotion, sometimes even with the performances of the Chief Military Prosecutor in the high-rating social and political talk shows. **With selectiveness in the provision of information, the authors of the Report faced directly, when applied to the Prosecutor General’s Office of Ukraine with the request to provide meaningful information on the violations of international humanitarian law in the areas of ATO, committed by the parties to the conflict, as well as the results of their investigation, which, as the Center for Civil Liberties became aware, was transmitted in the framework of the human rights dialogue to the Office of the European Union Representative in March 2016. In response from the GPU we received a letter of rejection, in which there was no single argument on the legal reasons for the**

**impossibility of providing a Ukrainian public organization with the information that has been transferred to the EU representative. If, as stated in the letter, this report in fact contains “information about the status and results of pre-trial investigation in specific criminal proceedings stating the circumstances of the crimes committed, obtained in the course of investigation evidence, personal data of suspects and victims, as well as other information of pre-trial investigation”, which, according to the same letter, “are related to the investigatory privilege and not subject to disclosure” – then the General Prosecutor’s Office in accordance with the same article 222 of the CPC of Ukraine, to which it refers, has committed a criminal offense, passing this information to third parties who are not participants in criminal proceedings.**

## The flaws inherent in the investigation of crimes on the part of the illegal armed groups of the so-called “DNR/LNR”

### a. Lack of coordination and problems of jurisdiction

In conversations with members of mobile teams the investigating officers confirmed the presence of a large number of “mixed” cases, i.e. those that contain the elements falling within jurisdiction of both the police and the SBU, as well as the Prosecutor’s Office. The events that occur around the one injured person, or the actions of one and the same IAG can simultaneously be investigated by both the national police and the SBU, and the Prosecutor General’s Office. If the first investigate, for example, murder and abduction committed by a specific group, the SBU is concerned with crimes against national security, and the GPU is investigating the activities of the law enforcement bodies and Government officials implicated in the crimes, committed in the context of the armed conflict in the East of Ukraine. This distribution, which eliminates the complex approach to the investigation, on the one hand, greatly

reduces the efficiency of the investigation, and on the other hand, makes an investigation “manageable”.

This problem again raises the issue of necessity of the comprehensive investigation at least in Donetsk and Lugansk Oblasts (*and if possible, also in the Crimea*) and creation of the appropriate inter-agency group, what have been repeatedly emphasized by human rights defenders and civic activists.

*During a meeting with representatives of the Center for Civil Liberties and the International Federation for human rights (FIDH) in October 2015, representatives of the General Prosecutor’s Office of Ukraine assured that they have chosen a different tactics – namely, “the judgement of the individual convictions, and then combining them into one “picture”.*

Instead of coordination, sometimes one can see, on the contrary, the competition of different departments. The

competition not in the quality of the investigation, but in the possibility to receive awards or material benefits.

Opportunities of the Office for Investigation of Crimes against Peace, Security and Mankind and International Crimes created in the framework of the Military Prosecutor’s Head Office are limited.<sup>21</sup> As it became known during the mentioned meeting with representatives of the General Prosecutor’s Office of Ukraine, in the created Office there are employed only 34 persons, with 10 prosecutors and 18 investigators among them. According to the Head of the Office O. Prokonov, this body is dedicated exclusively to investigation of crimes associated with offenses against national security and waging aggressive war against Ukraine. In particular, under its jurisdiction there were cases of citizens of Russia Yevhen Yerofeyev and Oleksandr Alexandrov, who were detained by the AFU in August 2015.

*After the lawyer’s of victims and human rights defenders’ applying to the Interior Ministry Head Office of Ukraine in the Donetsk Oblast as for creation in the Interior Ministry HIO (Head Investigatory Office) of Ukraine an inquest operatives group for comprehensive investigation into crimes committed by the militants of the so-called “DNR” in Slaviansk, this application was kicked to the level of the Donetsk Oblast authorities, which informed about their inability to resolve such issues and take appropriate decisions. Thus, the investigation of crimes of the Russkaya Pravoslavnaya Armiya (“Russian Orthodox Army”) terrorist group, the coordination of which was carried out by a citizen of the Russian Federation Igor Girkin, is conducted scattered between several agencies – SBU, the Interior Ministry and the Military Prosecutor’s Office that significantly and adversely affects the quality of these investigations. The only positive result of the efforts on the part of the representatives of the injured party is the creation of a team of investigating officers within the Head Investigatory Office of the NPU, but its activity is limited to investigation exclusively of the murder of Volodymyr Rybak, Yuri Popravka and Yuri Diakovskiy. At that, the persons who were abducted by the Girkin/Strelkov group, and released later on, are not recognized as victims by them.*



## b. The dilemma of “mobile” investigators teams

As evidenced by the experience of several cases monitored by the members of mobile teams, more professional and independent compared with local police are the investigators sent on a mission to Donetsk and Luhansk Oblasts from other regions of Ukraine.

Although the statement about the effectiveness of investigators from other oblasts is not always also confirmed too, because many are the times when arrived on mission law enforcement officers and investigating officers perform their duties formally. Collecting the documents and materials, they come back from a mission trip without passing the information obtained to their successors, who have to take investigative actions from the start, referring to the same people for the same materials and information. In addition, important is the problem of lack of time to conduct an investigation for those who are sent on a mission to the liberated territories temporarily.

*The monitoring team managed to communicate with the investigating*

### 9. The Podushkin Case:

the victim's lawyer notes that, despite the frequent change of investigators in the criminal proceeding, only one of them has proved effective and he arrived on a mission from a different Oblast. According to the lawyer, his work is better in terms of the level of holding interviews, detailing, persistent correspondence with the Prosecutor's Office, which at the beginning of the process of the investigation refused to provide additional documents or to introduce the results of the investigation with the charges of the employees of TDF (*temporary detention Facility*).

*officer, who several times has been a member of such teams. One of them worked in Donetsk Oblast within 2 months, the second one – within one month, the third one – within one week. The main task outstanding in front of these teams was the distribution of all available proceedings for a certain period into “domestic offenses” and offenses associated with military operations, as well as separatism and terrorism. Further on, it was the second group of cases the investigating officers have to handle.*

*According to a law enforcement officer, who we managed to communicate with, according to the results of a two-week case screening in one of the cities of Donetsk Oblast there passed about 1000 cases through his hands, most of them turned out to be from the second category, that is, of those cases that are this way or another related to the activities of the so-called “DNR” Short term of mission travels, as well as the poor quality of local investigators prevented, he said, to bring to Court even simple cases.*

**Among the shortcomings of the work of the investigator teams involved for a the short terms the member of them himself names the following (it is worth to note that they reflect also general systemic problems of the investigation, primarily, targeting not at the outcome, but at formal indicators of work):**

- in a short time frame they try to build up work indicators (in the form of notices of suspicion produced), seeking for the obvious crimes and do not conduct investigative actions, aimed at verifying the information regarding which there are “investigators leads”, a similar situation occurs in cases, which require to carry out large amounts of investigative actions, because they don't have enough time for it;
- render in absentia resolutions on announcement of suspicion to identified persons (who committed crime without “masks”), but the actions that may lead to the establishing persons who are accessories to crime (persons whose identity they failed to establish) are not taken;
- witnesses and victims are interviewed hastily and only on one obvious fact of the crime, while with more detailed interviewing there can appear “leads” helping to establish accessories to crime or solve other crimes committed by the same persons;
- ignorance in dates, events and local personalities that causes errors in the process of collecting evidence base information;

### c. The lack of investigators' access to suspects

Most of those who committed the gravest crimes left the areas, over which the Ukrainian army returned control, in advance. Many such individuals currently are wanted (*in particular, Igor Strelkov/Girkin*), whereas they themselves are either in still occupied areas of the so-called “DNR” and “LNR” and in the Crimea or in the territory of the Russian Federation.

This is confirmed by the response of the GPU on the request for information of the Center for Civil Liberties: “Taking into account the persons being involved in the commission of the specified crimes (*it is about the proceedings concerning crimes of the so-called “DNR” and “LNR” stipulated by part 1, 2 of art. 438, i. 1 of part 2 of article 115, part 3 of article 258, part 1 of article 258–3 of the Criminal Code of Ukraine, – editor’s note*), in the non-Government controlled area, the persons within the criminal proceeding have been not detained, and indictment bills have been not delivered to Court”.

Remarkable in this sense is the liberation of the town of Slaviansk. When Ukrainian Government forces were approaching the city in early July 2014, a column of armored vehicles along with militants and captured hostages left the town in the direction of Donetsk. In particular Igor Strelkov/Girkin was among them. His person is directly linked with a host of evidence about the torture of hostages captured by the so-called “Russian Orthodox Army”, newly found by the monitors at the headquarters of the Girkin group documents, which attest the fact of “tribunals” and sentences of death rendered by such tribunals, as well as, presumably, with the death of a Deputy of the City Council of Horlivka Volodymyr Rybak. Strelkov-Girkin himself is now engaged in active public activities in Russia, being on the list of wanted persons in Ukraine. At the same time, “Interpol” refuses to put him on the wanted list referring to a political motive in the request of Ukraine.

The same applies to Luhansk Oblast. For example, the so-called Prizrak battalion (“Ghost”) left Lysychansk, where it was based since the spring of 2014, during the liberation of the city by the AFU and battalions of Interior Ministry. About the criminal activities of the battalion, in particular, the abductions and torture, human rights activists collected a lot of evidence, but access to major figures is not yet possible.

## 5. The Melnikova Case:

In response to the request for information of the Center for Civil Liberties on the investigation of the case of Antonida Melnikova the Luhansk Oblast Prosecutor’s Office refers to the fact that “working in that direction is complicated by the commission of offenses by the members of the illegal armed groups, who have the possibility to hide in the temporarily occupied areas of Luhansk and Donetsk Oblasts”.

It should be noted that a separate accounting of the crimes committed in the occupied areas by the law enforcement bodies of Ukraine and their respective oblasts is not conducted; they are registered in a general order on the standard procedure in the law enforcement bodies of the Ukrainian Government controlled areas. Almost all of them settle down as “a dead weight” because, first of all, lack of access by investigators to the crime scene. However, even victims or their relatives receive information on “investigations” carried out by “the investigative bodies” of “DNR/LNR”.

A volunteer, in the past known TV-host Olena Kulish and her husband Volodymyr Aliokhin, who helped the Ukrainian army, were abducted from their home by eight armed men in camouflage in the early morning of August 10, 2014 in the village of Peremozhne, the Luhansk Oblast. At that time this village regularly got under shooting and shellfire attack, carried out by the “LNR” militants in the direction of

the Luhansk airport. The captors burst into the house of the family, grabbed 50 thousand dollars, home appliances, all documents, two cars. They brought out Olena and Volodymyr in front of their children eyes, pushed in one of the stolen cars, drove in the direction of the village of Pervozvanivka and murdered them. The bodies were buried on the spot. For more than half a year the relatives did not know about the fate of the abducted Olena and Volodymyr. The bodies were found in early January 2015 in the village of Piatygorivka, Lutugino District of Luhansk Oblast by the so-called “law enforcement authorities” of the “LNR”. As it was reported to the family of victims by the “Prosecutor’s Office of the LNR”, persons who had been detained in another case (Oleksii Volodymyrovych Gerikh with the call sign “Medved”, Chief of Staff of “Odessa” OBRON, citizen of Russia, from the city of Rostov-on-Don, and Oleksii Oleksiyovych Fominov with the call sign “Foma”, “Odessa” OBRON Commander, also a citizen of Russia, but from the


Krasnodar Krai), themselves pointed to the place of burial. It is difficult to predict what might be the progress in this case.

In the case of the murder of the family of Kulish it is obvious that an obstacle for the investigation of such cases becomes lack of access not only to the crime scene, but even to the body of the murdered person.

After repeated refusals, only at the end of June 2015 (i.e., almost a year after the murder) the relatives of the executed Kulish family, managed to bury the bodies and take DNA samples. DNA samples of Olena Kulish confirmed the identity of the body, the DNA samples of Volodymyr Aliokhin are still under examination.

The widow of Volodymyr Rybak, Olena still cannot get the body of her husband, which immediately after its finding in 2014, was buried in the currently occupied city of Gorlivka. None of the teams involved in the negotiations with the IAG, as well as in the transfer of the bodies of the victims from the occupied areas, for a year and a half have been unable to help Olena.

Response of the State Security Service of Ukraine to the request of a lawyer claiming that there is no separate registration kept for the citizens’ appeals from the occupied areas



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Прим. № \_\_\_\_\_  
Скорбачу Олексію Івановичу


На № \_\_\_\_\_ від \_\_\_\_\_ року

Головним слідчим управлінням розглянуто Ваш запит на доступ до публічної інформації від 05.11.2015 року.

Повідомляємо, що у Головному слідчому управлінні не ведеться окремий облік звернень громадян із окупованих територій з заявами про вчинення злочинів.

Поряд з цим повідомляємо, що у Головному слідчому управлінні СБ України усі звернення громадян із заявами про вчинення кримінального правопорушення розглядаються в установленому законом порядку та за результатами цього розгляду відповідно до ст. 214 КПК України, не пізніше 24 години, слідчим вносяться відомості до Єдиного реєстру досудових розслідувань.

Відповідно до ст. 218 КПК України досудове розслідування здійснюється слідчим того органу досудового розслідування, під юрисдикцією якого знаходиться місце вчинення кримінального правопорушення.

Заступник начальника  
Головного управління  Б. Тиволар



#### d. Uncertainty about the prospects of application of amnesty, as well as “hidden amnesty”

The format and conditions of the amnesty provided by the Minsk Agreements remain uncertain. Item 5 of this document is blurred, it speaks of “pardon and amnesty by adopting a law, prohibiting the prosecution and punishment of persons in connection with the events that have taken place in some areas of Donetsk and Luhansk Oblasts of Ukraine”.

It should be remembered that the amnesty applies only to the convicted in criminal procedure that should be the result of a fair judicial process. Then, each individual case of committing a crime cannot be just “pardoned” or forgotten. A proper judicial procedure in accordance with national regulations in compliance with international standards of human rights must take place, and only after this procedure completion and the establishment of the degree of guilt the person may be recognized as such, who falls under the amnesty, according to the Minsk Agreements. Any other option of exemption from liability for crimes committed will strengthen the existing today in the non-Government controlled areas impunity and in no way will provide for restoring justice and peace.

Designed to perform the Minsk Agreements the Law of Ukraine “On preventing prosecution and punishment of persons-participants of the events on the territory of Donetsk and Luhansk Oblasts”<sup>22</sup> was voted for by the Ukrainian Parliament in September 2014 despite intense criticism of its provisions the human rights organizations. This law has never been signed by the President (*status of the document at the moment on the website of the Verkhovna Rada – “being prepared for signature”*). Thus, the issue of amnesty as for the liability of certain categories of citizens of Ukraine remains unresolved, and the prospects of it are unintelligible. Although officials at various levels have repeatedly stressed that the amnesty will not affect those who have committed serious crimes, crimes against humanity and war crimes<sup>23</sup>. Because of the acuteness of the political moment the resolving of this issue is postponed and it is recently not

commented in public space (*most of the comments about it were voiced in autumn 2015*). Along with this, the prospect that persons whose acts now are being investigated, will eventually be officially exempt from liability, deprives the law enforcement officers of the remains of enthusiasm about the conduct of any quality investigative actions against acts of these individuals.

However, in parallel with the resolving the issue of amnesty in the course of the Minsk negotiations, the exemption from criminal liability of participants of the IAG takes place in Ukraine within other procedure. It is about the program “Waiting for You at Home,” which was launched by the SBU August 18, 2015 and aimed at “bringing to the participants of illegal armed groups of the so-called “DNR/LNR” the provisions of the legislation that provide for the possibility of exemption from criminal punishment”. According to the secret service, as of April 2016, “more than 60 former militants of the illegal armed groups have benefited from the program”.

This process requires a separate study in view of the potential risks, which in practice may lead to a de-facto “covert amnesty” for serious crimes.

SBU argues that “If a person commits another crime, not associated with his participation in the illegal armed groups, such as robbery, intentional murder, then of course these acts will be qualified separately. At the same time, the low quality of investigations of crimes committed against the civilian population of the so-called “DNR/LNR”, makes no warranty that the facts of some person being involved in the serious crimes will be established. According to a representative of the secret services, the profile of each person is verified in operative ways (*“people are checked through the operational capabilities of our service”*), as well as through other program participants, former members of the illegal armed groups. But there are no data on applying for clarification of this information to the National Police (*and it is the authority that holds most of the investigations for torture, illegal*

*detentions, murders of civilians*), as well as to the General Prosecutor’s Office (*which, as noted, is investigating a big proceeding combining almost three thousand victims of the crimes of the IAG of the so-called “DNR/LNR”*).

These fears are confirmed also by the information that the mobile team received from one of the investigating officers. As of October 2015, there were declared 61 sentences in different oblasts of Ukraine for the persons who were in the ranks of the so-called “DNR”. It is possible that it is about people who have benefited from the opportunities of the specified program of the SBU. But the concern is that the wordings of sentences of the district courts of different oblasts do not contain data about what exactly, when, where and under what circumstances has been done by these individuals. There was only brief mentioning the person’s name, a reference to the fact that he/she voluntarily came to collaboration with the “DNR”, stood on a checkpoint inspecting documents, then – the sincere repentance and deal with the investigation. The verdict is approved by the Court, as a rule, “5 to 3” – that is, five years of imprisonment with a probation term of 3 years. The only exception of those on more than 60 cases was the sentence of “4 to 1”.

The fact that it is about different oblasts of Ukraine, respectively, different courts, and at the same time about the same type of “standard” sentences with blurry fuzzy wordings, gives reason to question both the good faith of the carried out investigation, and the justice of judicial decisions. And under such conditions, to be certain that the person did not commit grievous crimes, is quite difficult.

Another problem, which requires a separate study is the extra-legal practice of forming an “Exchange Fund”. It is in the suspending delivery of decisions on suspicion to the members of illegal armed groups who have committed grievous crimes, with the purpose of further removing from them the preventive measure and exchanging for the Ukrainian prisoners of war and illegally held civilians who are in the grip of so-called “DNR/LNR”

22 [www.w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=52183](http://www.w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=52183)

23 [www.ukr.segodnya.ua/regions/donetsk/klimkin-obyasnil-komu-iz-dnrlnr-svetit-amnistiya-655935.html](http://www.ukr.segodnya.ua/regions/donetsk/klimkin-obyasnil-komu-iz-dnrlnr-svetit-amnistiya-655935.html)

# CONSEQUENCIES OF INEFFICIENT CONDUCT OF PRE-TRIAL INVESTIGATION

**O**verall reform and modernization of the power structures in the Ukrainian Government controlled territories of Donbas, formulated by the leadership of Ukraine as one of the main tasks and constantly declared, is **impossible in conditions of impunity**.

The continuation of the tradition of impunity, when the issue is not just about covering each other's backs, but about the gravest violations of international criminal law, such as crimes against humanity and war crimes, creates the **risk for not only occupied areas, but also liberated ones to turn into the zone of impunity with unpredictable scenarios of the situation development** (*up to moving under the so-called "DNR"/"LNR"*)—instead of "showcase of a free country", which all hoped for.

Among other things, this means **the loss of a chance for renewal and**

**improvement of the system not only on a local level, but also at the level of the whole country.** In addition to that, it creates conditions for a **rematch of the so-called "old system"** at the general level, as well as at the level of specific personalities.

Impunity gives rise also to a high level of public frustration, **making reconciliation impossible**, and to the contrary, rather promotes the growth of tension in society.

The reverse side of this situation may be the **emergence of people's avengers and "courts of Lynch"**. Although it is worth noting that in Ukraine, this danger is not clearly expressed, however, there are cases when citizens try to commit mob rule, believing that investigative authorities remain idle or even cover those whose actions, they believe, led to the capture of the territory by the illegal armed groups.

**One of the negative consequences of the inefficient conduct of a pre-trial investigation consists in the fact that**

**there is a need of increased initiative on conducting investigation on the part of the victims, their lawyers and human rights activists.** If the victim himself, his representatives, as well as activists and journalists do not insist on the investigation of the case and do not attract attention of the public to it, there is almost no chance that it gets off the ground and will be properly investigated into, and the guilty will be brought to justice. In the situation of sometimes downright sabotaging investigation on the part of investigators, the obligation to monitor it falls on the victims themselves: they have to require interviewing them, as well as interviewing witnesses, to engage in their search, to request expert examinations. If the injured person has no lawyer or someone who provides public resonance of the case, the person may be refused from access to materials of the case, that is unlawful. And inherent to almost all of the examples mentioned in this Report.

One of the hostages, who was held by members of the illegal armed groups at one of the captured facilities, now is subject in a criminal case, and in the local press he is spoken of as “the people’s avenger.” Local law enforcement authorities parallel to a case about his abduction investigate proceeding regarding his own actions associated with “revenge to the local separatists”, in particular the arson of a car and a dwelling house, shooting at the housing (qualification: attempted murder, intentional destruction of or damage to property). Regarding the criminal case that was launched against him, the man said that he was prompted to resort to the radical unlawful actions by the idleness of the law enforcement authorities in bringing to criminal liability the major, in his opinion, culprits who are to blame for the beginning of the war—both organizers and direct performers (those who created the checkpoints, provided weapons and physically transferred funds to militants, organized trips of “titushki” to the Antimaidan rallies, etc.), who presently are in the liberated territories. “I asked the policeman who I communicated with: “Have you imprisoned at least one of them within a year and a half? No, we haven’t”. So I started sorting it out myself” Although it is worth noting that, in the words of our interlocutor, there still are criminal cases launched against some of these people. The first precautionary measure for this person was chosen in the form of home arrest, but the second time it was not extended. According to the man, combatants and local patriotic organizations came to the defense of him. That is also a characteristic feature.

So, often the victims themselves, their attorneys, and human rights activists are the driving force that makes the unmotivated investigation work.

## 10. The **Victim from Pisky** Case:

If it were not for the lawyer to appear in the case, there is reason to believe that it would be “buried”, because not a single action on the part of the law enforcement officers was taken in a year and a half. Certain steps were made only with the advent of requests by the representative of the injured party.

## 5. The **Melnikova** Case:

only after reminders on the part of the victim Antonida Melnikova, as well as after repeated submitting the victim’s statement, investigators started a criminal proceeding in her case. She also initiated numerous investigative actions, which should have been initiated by the investigating officers in the framework of the execution of their immediate duties.

## 9. The **Podushkin** Case:

while law enforcement agencies conducted a meaningless correspondence, the victim and his attorney constantly pointed out for the investigating officers, who should be interviewed, informed of the circumstances that had significant value and contributed to the materials of the case with screen-shots of the social network personal pages of the suspects in abduction (*persons who were on the “checkpoint”*). Only due to their demand two individuals were put on a wanted list, and the materials from a social network (*primarily for identifying these people by their photos*) were added up as evidence.



# RECOMMENDATIONS

## For the attention of the Verkhovna Rada Of Ukraine

- To ratify the Rome Statute of the International Criminal Court with the purpose of prevention of committing crimes against humanity and war crimes on the territory of Ukraine in the future, as well as to promote the development of effective national system of criminal justice.
- To fulfill the recommendation of the PACE Resolution No. 2112 (2016), according to which the Assembly calls on the Ukrainian authorities “to bring its national legislation, including the Criminal Code and the Criminal Procedural Code, in accordance with the provisions of international criminal law and, in particular, include provisions on the status of a captured person and to define torture as a grievous crime”.
- To adhere to the principles of international humanitarian law when implementing the amnesty provided for by the Minsk Agreements. With this purpose, it is necessary to fix legislatively a procedure according to which, the amnesty can be applied only after conducting full investigation and establishing all the circumstances of the crimes and the guilty persons in the course of a trial; amnesty will not apply to persons who committed grievous and especially grievous crimes under the Criminal Code of Ukraine; amnesty will not apply to crimes which, under the Rome Statute, may fall under the definition of “war crimes” and “crimes against humanity”

## For the attention of General Prosecutor’s Office of Ukraine

- To form in the body of the General Prosecutor’s Office of Ukraine a unit, which would conduct comprehensive investigations (*based on the example of the Special Investigations Office “for the Maidan affairs”*) of armed aggression of the Russian Federation and international crimes committed in its framework, starting from the events of the annexation of the Crimea. To engage in its work representatives of other investigative bodies, in the first place NPU and SBU. To provide the unit with powers as for coordination and control over performance of criminal proceedings that are started on the facts of the crimes committed in the ATO zone on the part of the so-called “DNR” and “LNR” and the Russian Federation. Corresponding functions can be foreseen, for example, for already existing Office of Investigation of Crimes Against Peace and Security of Mankind, to expand its staff and allocate the necessary resources.
- In the framework of the implementation of Recommendation 1, to organize a systemic operation of regional investigators, in particular, to develop a system of reporting before the main center of investigations as for outcomes of the investigations at the local level. To start a training program for regional investigators, who are directly involved in the process of investigating the aggression of the Russian Federation against Ukraine. It is worth to continue the practice of engaging in the investigation on the territory of Donetsk and Luhansk Oblasts the investigators from other regions, at the same time taking into account the shortcomings specified in the Report.
- To consider opportunities to attract international assistance for creation of an efficient model of national justice with an international element, which allows foreign experts working alongside experts, investigators, prosecutors and judges of the national authorities. We would like to emphasize that, in our view, the implementation of the international element is essential not only at the level of the administration of Justice, but also at the stage of pre-trial investigation.

## For the attention of the National Police of Ukraine

- To identify as a priority issue the establishment of an effective operation of law enforcement agencies in the area of ATO. To consider a possibility of formation of law enforcement reserve to fill the staff of Luhansk and Donetsk Oblasts. To foresee additional motivational mechanisms for employees at the local level. To implement the policy, according to which the employees of law enforcement bodies, who failed to pass re-assessment, cannot be sent to the area of ATO and adjacent territories.

## For the attention of Security Service of Ukraine

- To conduct a proper investigation into cases of unlawful detention and holding by the officers of the Security Service of Ukraine the people suspected in “separatism”, who later on were transferred to the occupied territory of the Donetsk and Luhansk Oblasts with the purpose of exchanging them that, among other things, prevents the collection of evidence to confirm the aggression of the Russian Federation and international crimes committed in its framework.

## For the attention of the General Prosecutor’s Office of Ukraine, National Police of Ukraine and the Security Service of Ukraine

- To regularly publish information, in particular statistical data on the case status of investigated crimes committed in the area of ATO, including those that were committed by Ukrainian forces of ATO.

**In General, all government agencies should follow the principle of “legal certainty” and provide a definitive legal assessment of the events in Donbas as an armed conflict with the Russian Federation, not ranking it for “internal” and “external” use.**

# NOTES

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## **Center for Civil Liberties**

Founded in Kyiv in 2007 to promote and strengthen the values of human rights, democracy and solidarity, the principle of human dignity in Ukraine and Eurasia.

The main goal of the CCL is to protect fundamental rights and freedoms. Our organization represents the interests of the society, carrying out control of national authorities and regional authorities on the subject of human rights.

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