

## Overview of the situation with the prohibition of torture in Ukraine. 2019-2020

### 1. Regulations

The Constitution of Ukraine proclaims human "life and health, honour and dignity, inviolability and security" as the ultimate value and explicitly prohibits the use of torture in its article 28: "no one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity."

Ukraine's 2005 Criminal Code affirms the prohibition of torture in its article 127, *Torture*, that makes torture a criminal offence and defines it as:

*"intentionally inflicting severe physical pain or physical or mental suffering on a person by beating, tormenting or subjecting them to other violent acts for such purposes as coercing the victim or a third person to provide information or to make a confession, or punishing them for an act they have committed or are suspected of having committed, or for the purposes of intimidation or discrimination."*

While this article has subsequently been amended, the amendments did not bring its definition in conformity with the international standards in terms of specifying the torture perpetrator.

Thus, Article 1 of the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* defines torture specifically as any act committed "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." In contrast, the current version of article 127 of the Ukrainian Criminal Code does not specify that the perpetrator of this crime has to be someone acting in an official capacity. Instead, by Ukrainian law, torture can be perpetrated by anyone, whether or not they are a public official. As a consequence, the use of torture by persons acting in an official capacity is often qualified as "professional misconduct" or "abuse of power" rather than the crime of torture.

Specifically, where the perpetrators are police or penitentiary personnel, they are often charged under article 365(2) of the Criminal Code, "abuse of power or official position by a law enforcement official" involving "violence or threat of violence, the use of weapons or special devices, or painful and offensive acts affecting the victim's dignity, in the absence of signs of torture." In addition to this, article 373(2) of the Criminal Code criminalises the use of "coercion to obtain testimony during interrogation ... involving violence or ill-treatment" but, once again, "in the absence of signs of torture."

The phrase "in the absence of signs of torture" hinders proper enforcement of article 127, *Torture*, due to its concurrence with articles 365 ("abuse of power or official position") and 373 ("coercion to give testimony") of the Criminal Code of Ukraine. In most cases, the authorities investigating allegations of ill-treatment fail to see signs of torture and apply the "official misconduct" provision almost by default.

Criminalisation has not yet become an effective tool for bringing torture perpetrators to justice due to the overlap of different Criminal Code provisions and the fact that the article on torture does not explicitly define the perpetrator as someone acting in an official capacity.

While the Criminal Code article on torture has repeatedly been criticised for failing to specify the perpetrator, the Ukrainian Government and Parliament do not seem enthusiastic to turn the situation around. Thus, in March 2019, a bill introducing relevant amendments to the Criminal Code was sent back to the Ministry of Justice for revision.

The constitutional ban on torture is also reflected in the Law on National Police. Its article 7 does not only prohibit a police officer from "facilitating, practicing, inciting or tolerating any form of torture, cruel, inhuman or degrading conduct or punishment" but makes it an obligation for every police officer to stop such actions perpetrated by their peers. Should a police officer witness an act of torture, he or she is required not only to take prompt steps to stop it but also to report the incident both to their supervisor and to the State Bureau of Investigations (a body tasked with investigating criminal offenses committed by law enforcement officials). If evidence of torture cover-up is found, the chief of the relevant police department must initiate an official inquiry within 24 hours.

### 2. Statistics

It can be difficult to make an objective assessment of the scale of torture by law enforcement officials. No official statistics are available from the judicial or oversight bodies. Since the legal definition in the Criminal Code article on torture lacks the important qualifying characteristic of torture as a crime committed by a public official, the reports<sup>1</sup> published by the *State Judicial Administration of Ukraine* only provide the total number of criminal proceedings on charges of torture but do not indicate whether or not the perpetrators are public officials. On the other hand, reports<sup>2</sup> from the *State Bureau of Investigations* (SBI) reveal the overall number of criminal proceedings against law enforcement officers but do not specify the Criminal Code articles under which the criminal charges were brought.

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<sup>1</sup>[https://court.gov.ua/inshe/sudova\\_statystyka/rik\\_2019](https://court.gov.ua/inshe/sudova_statystyka/rik_2019)

<sup>2</sup><https://dbr.gov.ua/report/zvit-pro-diyalnist-derzhavnogo-byuro-rozsliduvan-za-2019-rik>

In response to inquiries about the number of criminal proceedings and sentences under article 127, *Torture*, against law enforcement officials, the judicial authorities and the SBI usually reply that no such statistics are available or collected, because this information is not included in their reporting forms. Only the *Department for Procedural Guidance in Criminal Proceedings on Torture and Other Serious Violations of Citizens' Rights by Law Enforcement Agencies* at the Prosecutor General's Office was able to provide some data on torture and ill-treatment by law enforcement officials.

In 2019, a total of 52 criminal proceedings were registered in Ukraine against law enforcement officials under article 127, *Torture*, of the Criminal Code, and two officers were notified as suspects. Only in three cases, the investigations were completed and indictments issued, while 54 cases were dropped for various reasons (this number includes criminal proceedings from previous years).

In 2019, a total of 1629 cases were prosecuted under article 365(2) of the Criminal Code, "*abuse of power or official position by a law enforcement official involving the use of violence*" and 44 officers were notified as suspects, 42 investigation files were sent to court, and 1360 cases were dropped.

This data indicates that in most cases, the investigating authorities qualify ill-treatment by law enforcement officials as abuse of authority or official misconduct rather than torture. It is noteworthy that in December 2019, Roman Truba, the then SBI director, admitted the lack of effective torture investigation in Ukraine by stating, "*It is de-facto the first time that we have started investigating torture. Previously, crimes under Article 127 of Ukraine's Criminal Code did not get investigated, as some international organisations have pointed out to us.*"<sup>3</sup>

The statistics of registered complaints from citizens alleging abuse by officials can give us an idea of the actual prevalence of ill-treatment by law enforcement personnel. In response to an inquiry, the National Police's *Department of Informational and Analytical Support* reported having received 3902 complaints alleging torture and beatings by police in 2019 (compared to 1593 in 2018).<sup>4</sup> According to the Ministry of Justice, 77 convicted individuals complained of torture in prisons in 2019 (46 in 2018).<sup>5</sup> These figures also suggest that despite the existence of the State Bureau of Investigations, a body specifically authorised to investigate torture in the law enforcement system, a major part of torture complaints are filed directly with the police and the Ministry of Justice, raising doubts as to their compliance with effective investigation standards in such cases.

It should also be noted that the procedural legislation prohibits the use of evidence obtained through torture or ill-treatment (article 87 of the Criminal Procedure Code).

### **3. New cases of torture documented in 2019-2020**

A common reason why police officers use violence against detainees is not to force a formal written confession but rather to obtain information which may facilitate and speed up the process of solving a crime. Such information may include data on any accomplices, locations where the stolen items are hidden or channels of illicit drug distribution. Subsequently, this information is legalised through investigative actions such as searches and seizures or investigative experiments (i. e. forensic crime scene reconstructions) to produce admissible evidence.

Police officers also use violence to falsify or fabricate evidence. For example, investigative experiments, instead of reconstructing the actual sequence of events during and after the crime, are sometimes used to fabricate evidence, as law enforcement officials coerce a suspect into performing certain actions which are filmed and then used in court as evidence of guilt. By using torture, police can force a suspect to leave traces at the crime scene or fingerprints on a weapon, and subsequently legalise such fabricated "evidence" through forensic examinations.

#### **Use of torture as a means of extracting confessions or statements**

The confirmed cases described below are those documented by the Chief Bureau of Investigations of Ukraine. It follows from the indictments in each of these cases that torture was used primarily to obtain information which could help to solve a crime. Notably, the circumstances of these crimes indicate that the decision to use torture was made almost automatically and without hesitation, as if the perpetrators were following some "service manual."

On the night of 5 January 2019, a senior detective of the Criminal Police Department at Goloseevsky Police Department (Kiev), together with two other unidentified persons, tortured a man who had been apprehended near a murder scene and brought to his office.

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<sup>3</sup> <https://www.pravda.com.ua/columns/2019/12/24/7235696/>

<sup>4</sup> Reply to an information request of 30 September 2020.

<sup>5</sup> [Commentary by the Knarkiv Human Rights Group to Ukraine's Seventh Periodic Report on the Implementation of the UN Convention against Torture](#)

In an effort to force a confession, the officer beat the detainee with a rubber truncheon; the perpetrators also put a gas mask (which had been prepared in advance) on the victim and pinched the hose, blocking air access. A few hours later, the detainee made a confession and only then the torture stopped.

In September 2020, SBI investigators notified the police officer that he was officially a suspect in a torture case. A pre-trial investigation is underway.<sup>6</sup>

In February 2019, two police officers (Ingulsky Police Department, Nikolaev Region, Ukraine) broke into a private home and assaulted the owner to force a crime confession.

The man refused to confess, so he was pushed into a police car and delivered to the police department, where the torture continued. The perpetrators hung the man on a pipe placed between two desks and beat him.

Subsequently, the police officers were detained. The case was investigated by the SBI under the Criminal Code article on torture and sent to court in August 2019.<sup>7</sup>

On the night of 14 September, two police detectives apprehended two individuals suspected of multiple thefts and delivered them to Uzhgorod Police Department, Transcarpathian Region.

In an effort to extract a confession, the officers wrapped cloth around the detainees' wrists before handcuffing them and twisted their arms behind their backs, while repeatedly hitting them. Later, the police perpetrators hung the men over a wooden bar placed between their arms and legs and beat them with rubber truncheons.

During a pause, one of the men was able to free himself and jumped out of the fourth-floor office window to avoid further torture, sustaining moderate injuries from the fall.

An investigation was launched, and the case was sent to court in March 2020. However, the officers are facing charges for abuse of authority that involved violence, rather than for torture.<sup>8</sup>

In November 2019, SBI investigators sent to court the case file of four police officers who served at Industrial Police Department, city of Dnipro, Dnipropetrovsk region. The officers have been charged with using torture to coerce a confession. The investigators have established that the officers brought a theft suspect to the police department and beat him to extract a confession, causing moderate injuries confirmed by a medical examination.

The officers face charges for torture acting as group by prior collusion, as well as abuse of authority or official position with grave consequences.<sup>9</sup>

In December 2019, an 18-year-old man was summoned for interrogation to Kramatorsk Police Department (Donetsk region). Once he showed up at the investigator's office, three policemen started beating him to extract a confession of fraud. The police officers forced the young man to face the wall and beat him with a rubber truncheon, tied his arms and legs with duct tape, placed a plastic bag on his face so he could not breathe, and threatened to use an electric shocker on him. The torture continued for almost four hours.

Later, the officers were detained, and following an SBI investigation, charged with torture committed as a group by prior collusion. The case was sent to court in May 2020.<sup>10</sup>

### **Fabrication of evidence such as staging of mock crimes to improve crime solving rates**

Persistent use of torture to fabricate evidence of crimes suggests that many police officers prioritise the objective of keeping crime solving rates high over actually fighting and preventing crime. Indeed, the police often commit even more crimes in an effort to fake high performance.

While patrolling the railway station in Odessa on 1 June 2019, two patrol police officers (Odessa Region Patrol Police Department) noticed two obviously drunk men. The policemen decided to force them to confess to the theft of a gold chain.

They detained the men and brought them to the police department, where the officers started beating and humiliating one of the detainees. The other man asked them to stop beating his friend and offered his own chain as a replacement of the stolen one, but once the officer realised that his chain was not gold, he began hitting this man, too.

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<sup>6</sup><https://dbr.gov.ua/news/vibittya-ziznan-u-vbivstvi-dbr-povidomilo-pro-pidozru-u-katuvanni-stolichnomu-pravookhoroncyu>

<sup>7</sup><https://dbr.gov.ua/news/katuvannya-z-boku-pravookhoronciv-terupravlinnya-dbr-roztashovane-u-mikolaevi-skeruvalo-provadhennya-do-sudu>

<sup>8</sup><https://dbr.gov.ua/news/stribok-z-vikna-uzhgorodskogo-viddilul-policii-pravookhoronci-postanut-pered-sudom-za-perevischennya-sluzhbovikh-povnovazhen>

<sup>9</sup> <https://dbr.gov.ua/news/chotirokh-policeyskikh-z-dnipra-suditimut-za-katuvannya>

<sup>10</sup><https://dbr.gov.ua/news/troe-operupovnovazhenikh-nacpolicii-postanut-pered-sudom-za-katuvannya>

The detainees pleaded to stop beating them, saying that they had health problems and would report the ill-treatment to the authorities, but it only caused more violence and brutality.

An investigation was launched and completed in March 2020. The officers have been charged with torture committed by a group.<sup>11</sup>

The authorities have also successfully investigated a number of complex and multi-episode crimes which involved the use of torture.

In June 2020, during a joint operation by the State Bureau of Investigations and the Security Service of Ukraine, seven officers of Pavlograd Police Department (Dnipropetrovsk region), including the department's chief and deputy chief, were detained.

Throughout 2019 and 2020, the officers had fabricated criminal cases (theft, dealing in drugs and weapons), torturing and intimidating citizens to extract the testimony they wanted, in an effort to meet their performance targets and to fake effective crime control. The investigators searched the premises and seized various instruments of torture, fabricated criminal case materials and other evidence.

Chief of the National Police of Ukraine Igor Klimenko has since announced that Pavlograd Police Department and its four constituent units will be dissolved and reorganised. The investigation continues as of this writing.<sup>12</sup>

### **Violent assaults targeting random people, impunity and false reporting of offences**

Torture and ill-treatment have also been used for random reasons which cannot be explained by any rational motive. In a few reported cases, police officers were not trying to facilitate solving a crime or to meet any other service objective, but targeted random people, e.g. for making a negative comment about the police actions.

In October 2019, two patrol police officers (Kiev region) were charged with torture and abuse of office (Articles 127 and 365 (2) of the Criminal Code). During patrol duty in the town of Vasilkov, the officers had a verbal argument with a passer-by at a bus stop. At some point, the police assaulted the man, sprayed tear gas in his face and beat him brutally with fists and a gun butt. Then they handcuffed the victim, drove him to a deserted place outside of the town and resumed the beating, and then locked him up in the trunk of their service car.

The man's family started looking for him and called 102, the police hotline number. To avoid being found out, the patrol officers wrote a fake report alleging that the man was drunk and disorderly in a public place, refused to comply with their legitimate orders and engaged in petty hooliganism. In February 2020, the criminal case against the police officers was sent to court.<sup>13</sup>

### **Torture is also a widespread, traditional practice in the penitentiary system**

Torture is often used by prison officials or by cellmates at the officials' instigation, with their consent or acquiescence.

In July 2019, an inmate at Colony No. 1 in Vinnitsa died as a result of beating at age 59. An investigation established that six prison guards assaulted the inmate, inflicting at least 85 blows, and then placed him in a cell where a cellmate continued the beating.

The investigation continued for eight months, and the criminal case against six prison officials was sent to court in February 2020. There was a separate investigation against the cellmate who beat the victim.<sup>14</sup>

There is a persistent pattern of ill-treatment in the penitentiary when the prison administration recruits prisoners to informally carry out "disciplinary" or other types of punishments against their cellmates. This approach enables prison officials to avoid full responsibility, because torture is carried out by other perpetrators, even though they are dependent on the prison administration. Should there be an investigation, these inmates will be prosecuted for the ill-treatment in the first place.

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<sup>11</sup><https://dbr.gov.ua/news/policeyski-prinizhuvali-ta-bili-kiykom-zatrimanikh-dbr-povidomilo-im-pro-pidozru-u-katuvanni>  
<https://dbr.gov.ua/news/katuvannya-v-punkti-policii-odeski-patrolni-postanut-pered-sudom>

<sup>12</sup><https://dbr.gov.ua/news/dbr-zatrimalo-7-uchasnikiv-bandi-policeyskikh-sered-yakikh-dva-kerivniki-viddilu-policii-video>  
[https://mvs.gov.ua/ua/news/31493 U Pavlogradskomu viddili policii priznacheno timchasove kerivnictvo ta provodit sya sluzhbova perevirka .htm](https://mvs.gov.ua/ua/news/31493-U-Pavlogradskomu-viddili-policii-priznacheno-timchasove-kerivnictvo-ta-provodit-sya-sluzhbova-perevirka-htm)  
<https://ssu.gov.ua/novyny/7658>

<sup>13</sup> <https://dbr.gov.ua/news/policeyski-postanut-pered-sudom-za-katuvannya-lyudini>

<sup>14</sup><https://dbr.gov.ua/news/smert-uvyaznenogo-u-vinnickiy-ustanovi-vikonannya-pokaran-dbr-zavershilo-dosudove-rozsliduvannya-video>

Prison officials at Colony No. 97 in Berdyansk practiced summary torture and ill-treatment of prisoners by recruiting their cellmates as "assistants." The most common targets for torture were newly convicted individuals arriving at the facility. New inmates were subjected to various methods of torture designed to intimidate and subdue them, such as being tied up for days, forced to perform physical exercises outside in freezing cold, beaten on the heels, having needles pushed under their nails, and being threatened with rape. The administration also pressured inmates' families into making money transfers to indicated bank accounts as payment for "trouble-free" stay of their relative in the colony. It is worth a separate mention that the prison administration refused on three occasions to allow access to the facility for public monitors, apparently to limit their communication with inmates.

Following numerous complaints from families, criminal proceedings were opened and eight inmates were recognised as victims, but human rights defenders consider the likelihood of an effective and impartial investigation to be slim.<sup>15</sup>

**So far, despite the government's efforts to reform the penitentiary system and torture investigation mechanism, the practice of using riot control forces to beat, humiliate and intimidate prisoners continues.**

On 6 March 2019, a dozen or so armed men in black uniforms, with balaclavas covering their faces, arrived in Zheltovodsk Colony No. 26 and conducted a blanket search of inmate cells. It was impossible to identify them or to establish their affiliation, because the only insignia they wore on their uniforms was the security force code.

According to the inmates, the officials threw them out of their cells and made to lie face down, beat and kicked virtually everyone on various parts of the body, including the head, which is prohibited by service regulations. They also pushed rag gags in some prisoners' mouths, pulled hoods over their heads and taped over to make sure their eyes were closed.<sup>16</sup>

Similarly cruel and massive incidents of torture occurred in Colony No. 25 in Alekseevka.

Members of the Kharkiv Human Rights Group who visited the colony in March 2020 were approached by more than 20 inmates complaining about arbitrary violence at the hands of prison staff and their so-called "helpers" from among the inmates.

The inmates reported sophisticated torture, such as setting paper on fire on a person's body or immobilizing them with duct tape for several days; following such torture, some inmates attempted suicide.

While the prison administration strongly denied the allegations of ill-treatment, there was evidence available, such as photos of injuries taken with a mobile phone.

According to a report from the Verkhovna Rada Commissioner for Human Rights (Ombudsman), rapid-response special forces entered the facility on the night of 8 January 2020; they forced inmates to stay outside in freezing cold without warm clothes, handcuffed them behind their backs and made them lie down on the ground (some inmates spent more than an hour lying down half-naked on the asphalt). The Commissioner reported, "22 convicts were subjected to brutal torture, such as electric shocks, being forced to stay naked in the cold, and being raped with truncheons."<sup>17</sup>

Later, the victims were made to submit written statements saying that they had obstructed the search and had no grievances against the prison administration. Meanwhile, the colony administration claimed that they had acted lawfully by conducting the search and using the rapid response forces "to prevent a riot." They also announced a high-security regime at the facility, cancelled all family visits and denied access to lawyers, independent medical doctors, public monitors and MP assistants, and obstructed the Ombudsman's representatives in their work.

A subsequent official investigation revealed that during the rapid response unit's raid of the colony, no video recordings were made either by the stationary CCTV cameras or by the servicemen's body-worn cameras.<sup>18</sup>

Statistics provided by the Prosecutor General's Office gives an idea of the (in)effectiveness of investigation into prisoners' complaints alleging ill-treatment by prison administration: just three out of 40 complaints registered by prosecutors in 2019 were satisfied.<sup>19</sup>

To prevent incidents of torture from becoming public, the administration in places of deprivation of liberty often takes steps to conceal detainee injuries inflicted by personnel. In December 2019, following a conflict between detainees

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<sup>15</sup> [Commentary by the Knarkiv Human Rights Group to Ukraine's Seventh Periodic Report on the Implementation of the UN Convention against Torture](#)

<sup>16</sup> [Commentary by the Knarkiv Human Rights Group to Ukraine's Seventh Periodic Report on the Implementation of the UN Convention against Torture](#)

<sup>17</sup> <http://www.ombudsman.gov.ua/ua/all-news/pr/upovnovazhenij-po%D1%96nformuvala-narodnix-deputat%D1%96v-pro-zhorstoke-povodzhennya-%D1%96z-zasudzhenimi-u-kropivniczkomu-s%D1%96zo-ta-oleks%D1%96%D1%97vsk%D1%96j-vipravn%D1%96j-kolon%D1%96%D1%97/>

<sup>18</sup> [Commentary by the Knarkiv Human Rights Group to Ukraine's Seventh Periodic Report on the Implementation of the UN Convention against Torture](#)

<sup>19</sup>Reply from the Prosecutor General's Office to the inquiry of 30 September 2020



and staff, the Kropyvnytsky pre-trial detention centre's medical unit registered 97 complaints from 82 prisoners injured during the so-called "security measures." It was later found by representatives of the Ombudsman's office that many more detainees with injuries were never examined by medics and records and causes of injuries were absent from the facility's official documentation.<sup>20</sup>

Victims of torture are provided with medical care in places of deprivation of liberty only when there is an imminent threat to the victim's life, and even then, access to medical care is often used as an instrument of pressure against the inmate. Thus, an inmate in Kholodnogorsk Colony No. 18 had his arm broken by prison guards. According to the victim, the prison staff denied him medical assistance or hospitalisation until he agreed to make a videorecorded statement that the injury was the result of his fall from a gymnastic bar while doing physical exercises.<sup>21</sup>

In the context of this persistent human rights crisis the penitentiary institutions, the Ministry of Justice's decision to dissolve its *Directorate for Human Rights, Access to Justice and Legal Awareness*<sup>22</sup> appears inconsistent and suggests that the authorities are not making genuine efforts to correct the situation.

Institutions such as the Ombudsman and the National Preventive Mechanism (NPM) lack the legal power and suffer from shortages of human and financial resources, making them unable to have a significant impact on the human rights situation in places of deprivation of liberty. *"The statistics of NPM's visits to places of deprivation of liberty since its inception reveals that the proportion of visited facilities remains critically low at around 5% of the total. The current mandate of the Ombudsman does not provide sufficient powers to address violations and to hold the perpetrators accountable other than through public criticism and open discussion of the problem,"* according to experts of the *Kharkiv Institute for Social Research* based on their assessment of Ukrainian NPM's performance.<sup>23</sup> Prison officials often feel free to openly demonstrate their negative or dismissive attitude towards visiting NPM representatives and either fail to respond to documented evidence of violations or simply obstruct NPM missions. Thus, in February 2019, the administration of Derzhivsky Colony No. 110 (Lviv region) denied access to the facility for representatives of the Ombudsman's office.<sup>24</sup>

#### 4. Protection and safety of torture victims. Rehabilitation

No progress was observed in 2019 in terms of meeting urgent needs such as ensuring adequate protection of victims during the investigation, providing them with medical assistance in a timely manner, and putting in place victim rehabilitation programmes.

Lawyers have consistently reported a widespread practice whereby victims of torture in places of deprivation of liberty are pressured into formally denying any grievances against the administration of the facilities.<sup>25</sup>

Thus, a large number of reports alleging torture at Alekseevka Colony No. 25 prompted the State Bureau of Investigations to open a number of criminal proceedings, but human rights defenders are sceptical about the chances of bringing the perpetrators to justice.

Neither the SBI, nor the prosecutor's office have taken adequate measures to protect the victims who remain under full control of the same penitentiary staff that they have complained against. The victims were interrogated in the absence of lawyers, on the premises of the penitentiary facility, and in an atmosphere of pressure from the prison administration. Likewise, forensic medical examinations were carried on the colony premises, usually without any instrumental research but only by taking photos of the injuries on a mobile phone. Complaining inmates faced psychological pressure and reprisals, including physical abuse, prompting many of them to withdraw their complaints.<sup>26</sup>

In addition to this, only NGOs provide social and psychological rehabilitation services to torture victims in Ukraine, which makes it almost impossible to offer such services inside penitentiary institutions.

#### 5. Key factors hindering the implementation of the prohibition of torture

It can be argued that no significant positive change was observed in the implementation of the prohibition of torture in Ukraine in 2019, as ill-treatment and violence continued to be widely used both to extract information and to intimidate, punish and subdue persons under control of law enforcement and security officials. While the Ukrainian

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<sup>20</sup> <http://www.ombudsman.gov.ua/ua/all-news/pr/upovnovazhenij-po%D1%96nformovala-narodnix-deputat%D1%96v-pro-zhorstoke-povodzhennya-%D1%96z-zasudzhenimi-u-kropivniczkomu-s%D1%96zo-ta-oleks%D1%96%D1%97vsk%D1%96j-viprav%D1%96j-kolon%D1%96%D1%97/>

<sup>21</sup> [Report by the Verkhovna Rada Commissioner for Human Rights, 2019](#)

<sup>22</sup> <https://zmina.info/news/minyust-likviduvav-dyrektorat-shho-zajmavsya-pytannjam-prav-lyudyny/>

<sup>23</sup> [National Preventive Mechanism against Torture and Ill-treatment in Ukraine. Performance Assessment](#)

<sup>24</sup> <http://www.ombudsman.gov.ua/ua/all-news/pr/predstavnikiv-ofisu-ombudsmana-ne-dopustili-do-vipravnoii-koloniii-na-lvivschini/>

<sup>25</sup> [Commentary by the Knarkiv Human Rights Group to Ukraine's Seventh Periodic Report on the Implementation of the UN Convention against Torture](#)

<sup>26</sup> [Commentary by the Knarkiv Human Rights Group to Ukraine's Seventh Periodic Report on the Implementation of the UN Convention against Torture](#)

authorities declare a genuine intention to put an end to brutality in the law enforcement system, their steps taken in this direction, in particular the wording of Article 127 of the Criminal Code, have failed so far to bring about the desired result.

A striking example of this failure was a widely reported incident in Kagarlytsky Police Station (Kiev region), whose officers spent the night of 23 to 24 May 2020 torturing two citizens, a young woman and a man, almost simultaneously in two different offices, to extract information. The perpetrators were beating the victims, sometimes using rubber truncheons, forced them to wear a gas mask and blocked the air access, fired guns over their heads, and raped the woman several times.<sup>27</sup> It was subsequently revealed by the investigation that brutal torture was routine in that police department.<sup>28</sup>

Police brutality caused countrywide public protests, forcing the authorities to finally admit the problem after a long period of denial. For the first time ever, the Prosecutor General's Office hosted an extended meeting attended by senior officials of the Ministry of Interior, the National Police, the Security Service, the State Bureau of Investigations and the Ministry of Justice<sup>29</sup> to discuss the problem of torture at the hands of law enforcement officials, while the Minister of Interior reported to the Verkhovna Rada on measures taken to prevent police brutality.<sup>30</sup>

The State Bureau of Investigations (SBI) tasked with investigating the use of torture by law enforcement officials is hardly capable, in its current form, to fully perform this function, in particular since they are required to handle a wide range of official crimes with few local subdivisions (their offices have been set up in just seven of Ukraine's 24 regions) and limited human resources. The fact that most parts of the country do not have a local SBI office makes it particularly difficult for torture victims to access justice.

While criminal investigators are required by the Criminal Procedure Code to enter all reports from citizens alleging ill-treatment by law enforcement officials in the Unified Register of Pretrial Investigations (ERDR), they often treat such submissions as they would treat simple complaints or appeals filed in accordance with the Law on Citizens' Appeals. This does not only lead to delayed initiation of criminal proceedings and loss of evidence, such as timely records of injuries, but also denies victims access to effective remedy against torture and undermines the right to complain.

In addition to this, torture investigations do not always meet the standard of independence and absence of conflict of interests, in particular when the SBI sends reports alleging torture back to the same police departments whose employees are indicated as the perpetrators. The Ombudsman voiced this concern, among others, in her 2019 report to the Verkhovna Rada: *"There is a tendency among SBI investigators to avoid entering information on reported criminal offences into the ERDR. Instead, SBI offices, having received reports from the Ombudsman's representatives about human rights violations by law enforcement officials, sometimes send such reports back to the same departments whose employees may be implicated in the violations. As a result of such 'investigations', they inform the Ombudsman that no evidence indicating that the officials committed the crimes in question has been found. The Ombudsman filed eight applications with courts challenging the investigators' failure to enter the information on offences into the ERDR, and all our applications were satisfied."*<sup>31</sup> An inquiry by the Prosecutor General's Office revealed that more than 200 criminal cases opened into incidents of torture and ill-treatment by in law enforcement officials were investigated by police rather than by the SBI.<sup>32</sup>

Even a torture victim's testimony in the courtroom does not guarantee that the crime will be promptly registered and investigated. Thus, in June 2019, officers serving with a police department in Kharkiv region arrested and tortured two men to force a confession of robbery. Both men stated during their trial that they had been ill-treated by the police, but this information was not reported to the investigating authorities, in contravention of Article 206 of the Criminal Procedure Code that requires the investigating judge to document such statements, order a forensic medical assessment, and instruct the SBI to study the facts set out in the statement.<sup>33</sup>

The State Bureau of Investigations does not collect or publish the statistics on its investigation of crimes under Article 127 (*Torture*) of the Criminal Code. One can judge by the lack of published statistics that perhaps the SBI does not consider this area of its work a priority.

In 2019, the Ministry of Interior and the National Police of Ukraine failed to implement many of the previously envisaged measures to lower the risks of torture by police.

An atmosphere of no tolerance for torture, as required by Article 7 of the Law on the National Police, is not yet a reality in police departments. Police officials at all levels of authority declare their commitment to eradicating torture but fail to show leadership by exposing the cases of ill-treatment and consistently bringing the perpetrators to justice. Incidents

<sup>27</sup> <https://dbr.gov.ua/news/zgvaltuvannya-ta-pobittya-u-kagarlickomu-viddileni-policii-dbr-povidomilo-pro-pidozru-dvom-policeyskim>

<sup>28</sup> <https://dbr.gov.ua/news/torturi-v-kagarlickomu-viddileni-policii-slidchi-dbr-povidomili-pro-pidozru-sche-dvom-pravookhoroncyam-ta-viyavili-novi-fakti-katuvan-video>

<sup>29</sup> [https://mvs.gov.ua/ua/news/31403\\_Arsen\\_Avakov\\_MVS\\_ta\\_Nacpoliciya\\_ne\\_prihovuyut\\_fakti\\_porushen\\_prav\\_lyudini\\_pravookhoroncyami\\_a\\_reaguyut\\_vidpovidno\\_do\\_Zakonu.htm](https://mvs.gov.ua/ua/news/31403_Arsen_Avakov_MVS_ta_Nacpoliciya_ne_prihovuyut_fakti_porushen_prav_lyudini_pravookhoroncyami_a_reaguyut_vidpovidno_do_Zakonu.htm)

<sup>30</sup> [https://mvs.gov.ua/ua/news/31439\\_Zvit\\_ministra\\_vnutrishnih\\_sprav\\_Arsena\\_Avakova\\_na\\_zasidanni\\_Verhovnoi\\_Radi\\_Ukraini.htm?fclid=IwARIT4nFq46RDX0eRMMprkr7MQOswpjpSvqlERwxCIn7QblPsDos\\_Zjet9c](https://mvs.gov.ua/ua/news/31439_Zvit_ministra_vnutrishnih_sprav_Arsena_Avakova_na_zasidanni_Verhovnoi_Radi_Ukraini.htm?fclid=IwARIT4nFq46RDX0eRMMprkr7MQOswpjpSvqlERwxCIn7QblPsDos_Zjet9c)

<sup>31</sup> [Report by the Verkhovna Rada Commissioner for Human Rights, 2019](#)

<sup>32</sup> <https://antidot.info/news/bolee-200-proyzvodstv-o-prestupleniyakh-pravookhranyteley-vela-natspolytsiya-a-ne-hbr/>

<sup>33</sup> [Commentary by the Knarkiv Human Rights Group to Ukraine's Seventh Periodic Report on the Implementation of the UN Convention against Torture](#)

of torture only come to light when victims file complaints with the relevant authorities, but the public officials implicated in torture through tacit consent, acquiescence or negligence do not get prosecuted but are merely transferred to other positions.

There are persistent problems with the implementation of video surveillance and other preventive measures. Ukraine has adopted relevant laws and regulations, but so far, they have not been sufficient to bring about a change in practices. The Ministry of Interior Order No. 1561-2003 requires every local police department to allocate a "room for conducting investigative actions" and equip it with a video surveillance system. The Order strictly prohibits subjecting detainees to "any investigative actions and other measures set forth in Ukrainian law on any premises other than this dedicated room." The Ministry of Interior Order No. 440-2017 requires all police departments to allocate and equip at least one "holding room for detainees" which should be the area of responsibility of the officers on duty.

Despite these orders, most police departments have not yet equipped any such rooms, nor do they make and keep video records of interrogations. Instead, detainees are often held in offices without video surveillance equipment and remain under full control of the officials who have arrested them. Police departments traditionally explain their non-compliance with the Ministry's orders by lack of resources needed to equip the rooms, although the public funds allocated to the Ministry of Interior reached the record 83 billion hryvnia (3.15 billion euro) in 2019, of which 29 billion hryvnia (1.1 billion euros) was earmarked for the police force.<sup>34</sup>

On a positive side, it is worth mentioning a number of progressive steps taken by the Ministry of Interior and the Prosecutor General's Office in 2019-2020. We find the following initiatives particularly promising:

- roll-out of a Custody Records monitoring system to equip IVS and local police departments with the technology for keeping electronic records of all actions involving each detainee, including continuous video recording of his or her location in custody and interactions with the staff;

- setting up, within the Prosecutor General's Office, the *Department of Procedural Guidance in Criminal Proceedings on Torture and Other Serious Violations of Citizens' Rights by Law Enforcement Agencies* which has already demonstrated effective performance over the brief period since its establishment: as of September 2020, 18 law enforcement officers were notified as suspects under article 127 on torture (two in 2019, year-on-year) and five cases sent to the court (three in 2019, year-on-year);

- developing a *Universal Injury Reporting Form* based on international recommendations to serve as guidance for healthcare workers examining a torture victim to make sure they take medical evidence according to a uniform standard.

While the steps listed above will reduce the risk of detainee ill-treatment to a certain extent, it cannot be expected to eradicate the problem of torture in Ukraine's law enforcement agencies.

In particular, one should understand that all technical and financial factors considered, equipping all rooms in police departments, without exception, with the Custody Records system is a matter of very distant future, and there are no plans so far to install this system in penitentiary institutions. Moreover, even the best surveillance equipment cannot guarantee full protection against ill-treatment due to potential "blind spots," equipment breakdowns, deliberate destruction or tampering with video files by law enforcement personnel, acts of torture outside of administrative buildings, etc.

Similarly, the establishment of new government bodies tasked with overseeing the legality of law enforcement practices may not be a reliable safeguard against torture, because the new bodies are likely to be staffed by former employees of the same law enforcement agencies that they are expected to oversee.

In their interventions to counter police brutality, the authorities persistently refuse to use the instruments of independent oversight available to civil society. Indeed, many other countries' successful experience of curbing police brutality highlights the element of independence in all effective solutions; "independent" is the key word in the phrase "independent oversight," meaning an independent system for processing complaints against the police, independent appraisal of police performance, and an independent torture investigation system.

It is a sad fact that once again in 2020, the Ministry of Interior and the National Police of Ukraine rejected a series of measures proposed by human rights defenders to lower the risks of torture in police custody. In particular, they refused to support the proposals made by the *Association of Ukrainian Human Rights Monitors on Law Enforcement (Association UMDPL)*<sup>35</sup> to set up joint mobile teams for monitoring the legality of detention in police departments and to engage civil society experts in collaboration with local Disciplinary Police Commissions in processing citizens' complaints about police brutality – even though community participation in such commissions is explicitly envisaged in article 90 of the Law on National Police.

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<sup>34</sup> <https://www.slovoidilo.ua/2019/01/01/novyna/polityka/zyasuvalosya-skilky-hroshej-byudzheti-peredbachyly-orhaniv-mvs>

<sup>35</sup> <http://umdpl.info/>