

ILL-TREATMENT IN THE ACTIVITIES OF THE NATIONAL POLICE OF UKRAINE: TYPES, SCALE, REASONS

Analytical Report
According to the results of a study

Partnership for Good Governance
Партнерство заради належного врядування



ANALYTICAL REPORT BASED ON STUDY RESULTS

ILL-TREATMENT IN THE ACTIVITIES OF THE NATIONAL POLICE OF UKRAINE: TYPES, SCALE, REASONS

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CONTENTS

INTRODUCTION	4
METHODOLOGY	6
SECTION I. SCALE AND SEVERITY OF ILL-TREATMENT	7
1.1. Scale of the use of force by law enforcement officers	7
1.2. Types of bodily harm caused by police officers	14
1.3. Types of medical aid provided to victims as a result of the use of force by police officers	17
SECTION II. CHARACTERISTICS OF THE SUBJECTS, WAYS AND PLACES OF ILL-TREATMENT	20
2.1. Subjects of ill-treatment	20
2.2. Forms and ways of ill-treatment by police officers	27
2.3. Ill-treatment place	30
SECTION III. CAUSES AND CONDITIONS CONTRIBUTING TO ILL-TREATMENT	36
3.1. Overview of causes and conditions contributing to ill-treatment	36
3.2. Obtaining a confession and other testimonies from a suspect	37
3.3. Disproportionate or arbitrary use of force while making an arrest	45
3.4. Punishment of a person for certain actions or actions of third parties	53
3.5. Impunity of law enforcement officers for ill-treatment	58
3.5.1. Criminal legislation loopholes as regards ill-treatment qualification	58
3.5.2. Lack of an efficient mechanism for investigating facts of ill-treatment	63
3.5.3. Inadequate punishment for torture	66
3.6. Low professional level of certain police officers	74
3.7. Improper level of psychological support of police officers	77
GENERAL CONCLUSIONS	80
RECOMMENDATIONS	86

INTRODUCTION

Everyone has a right to respect for their dignity¹. Establishment and protection of human rights and freedoms is the key obligation of the state². The aforementioned provisions are stated in the Constitution of Ukraine and represent a constitutional guarantee of the protection of human rights and freedoms, including those against ill-treatment.

Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment (hereinafter referred to as ill-treatment)³.

The term "torture" is defined in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, according to which torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession, punishing him/her for an act he/she or a third person has committed or is suspected of having committed, or intimidating or coercing him/her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity⁴.

Unfortunately, despite a number of international and national standards aimed at preventing torture, this ignominious practice is still used around the world, including Ukraine.

In their reports, leading international organizations such as the European Committee for the Prevention of Torture⁵, the UN Committee Against Torture, and the UN Subcommittee on Prevention of Torture on multiple occasions pointed out widespread practices of torture and cruel treatment used in our country. In 2012, the European Court of Human Rights issued a pilot decision on "Kaverzin vs. Ukraine", by which it actually acknowledged widespread practices of torture in Ukraine and lack of any system of efficient investigations of such facts.

A number of human rights organizations, including the Ukrainian Parliamentary Human Rights Commissioner, dedicate whole sections to this issue in their annual reports. A special report according to the results of the national preventive mechanism implementation is released on an annual basis; it shows actual practices of torture and cruel treatment in detention places.

At the same time, despite availability of a large amount of empirical data on the scale and types of torture and other forms of cruel treatment, in Ukraine there are actually no fundamental

1 Article 28 of the Constitution of Ukraine.

2 Article 3 of the Constitution of Ukraine.

3 Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

4 http://zakon3.rada.gov.ua/laws/show/995_085.

5 Full name: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

studies of the causes of such practices or conditions leading to them. Such conditions normally include law enforcement officers' ignorance of human rights standards and impunity for torture.

In our opinion, this understanding of the real causes of torture is quite superficial because, for example, there is a number of causes of impunity for torture, and severe liability for such practices alone is unlikely to improve the situation. Attempts to raise law enforcement officers' awareness of the current human rights standards yield the same results: these measures have had no considerable impact on the scale of torture.

Torture and cruel treatment are regular practices, which have obviously a number of causes and are currently functional in terms of achieving certain institutional objectives. So, without objecting to the importance of informational and educational efforts aimed at promoting human rights standards, we find it necessary to emphasize that really efficient instruments to influence such regular practices can be developed only by analyzing this systematic phenomenon.

This is the goal we pursued in our studies: trying to find out the true causes of torture and cruel treatment with as much detail as possible and analyze the conditions leading to such practices.

In order to simplify the terminology, we use the wider term "ill-treatment" in our study, which encompasses torture, cruel, inhuman, or degrading treatment and punishment.

The National Police of Ukraine is the target of our study.

METHODOLOGY

The main purpose of our study consists in revealing the causes and conditions leading to practices of ill-treatment in the activities of the National Police of Ukraine.

Objectives of the study:

- analyze the scale of ill-treatment and assess its severity;
- describe the subjects, forms and methods, places of ill-treatment;
- reveal the causes and conditions leading to ill-treatment.

The study relies on a set of qualitative and quantitative information collection methods, which, on the one hand, made it possible to obtain a number of quantitative indicators of the scale and practices of ill-treatment in the police activities, and, on the other hand, to thoroughly study the causes of such practices and reveal conditions leading to them. In general, the following information was reviewed in the study:

- statistics of the Prosecutor General's Office of Ukraine about initiated criminal proceedings under Articles 127, 365 (Part 2) of the Criminal Code of Ukraine for 2013 - 2017 (after the revised Criminal Procedure Code of Ukraine took effect);
- 160 sentences passed by national courts in 2012 - 2017 under Articles 127, 365 (Part 2) of the Criminal Code of Ukraine with respect to police officers;
- official statistics of the health care institutions for 2015 - 2017 as regards the number of citizens' requests for medical aid as a result of bodily harm caused by police officers.

In order to thoroughly study and analyze the problem, in our study we conducted

- 16 interviews with victims of ill-treatment by the police;
- 4 interviews with judges;
- 1 focus group with prosecutors;
- 1 focus group with lawyers;
- 1 focus group with patrol police officers;
- 1 focus group with investigators of the National Police;
- 1 focus group with district officers of the National Police.

Data were collected according to the following parameters:

- scale of ill-treatment, changes over the last 5 years;
- types and practices of ill-treatment;
- services and units most often practicing ill-treatment; causes of ill-treatment;
- efficiency of safeguards against ill-treatment.

SECTION I

SCALE AND SEVERITY OF ILL-TREATMENT

1.1

SCALE OF THE USE OF FORCE BY LAW ENFORCEMENT OFFICERS

The assessment of the scale of ill-treatment by police officers was based on official statistics of health care institutions concerning the number of residents' requests for medical aid due to bodily harm caused by police officers, an analysis of judicial decisions on such cases, and also a study of expert opinions.

It is quite obvious that data of health care institutions do not fully reflect the entire complexity of the problem as most victims of such violence request no medical aid or hide the real cause of harm when requesting such aid. Besides, we can assume that a certain percentage of those seeking help provide inaccurate information hiding that bodily harm was caused by police officers or stating that bodily harm was caused as a result of the lawful use of force (during an arrest, as a response to active resistance, etc.).

Anyway, we believe that such a source of information is the most valid one as it makes it possible to obtain information about real bodily harm, assess its scale and severity, nature, etc.

The real causes and origin of bodily harm should be evaluated by prosecutors in their official proceedings (see more details in Section 3.5), but statistics point out to the very low efficiency of torture investigations.

Figure 1-3 shows information on the number of citizens' requests for medical aid by regions of Ukraine for the last three years. It should be pointed out that the graphs do not show data for Donetsk Oblast and Lugansk Oblast as no thorough analysis can be conducted in these areas due to the occupation of a part of these territories.

1,217 requests were registered in 2015, including 167 cases in Kharkiv Oblast (Figure 1). A considerable number of requests can be observed in Zaporizhia Oblast (90), Lviv Oblast (85), Kyiv Oblast (83), Poltava Oblast (77) and the city of Kyiv (88 requests).

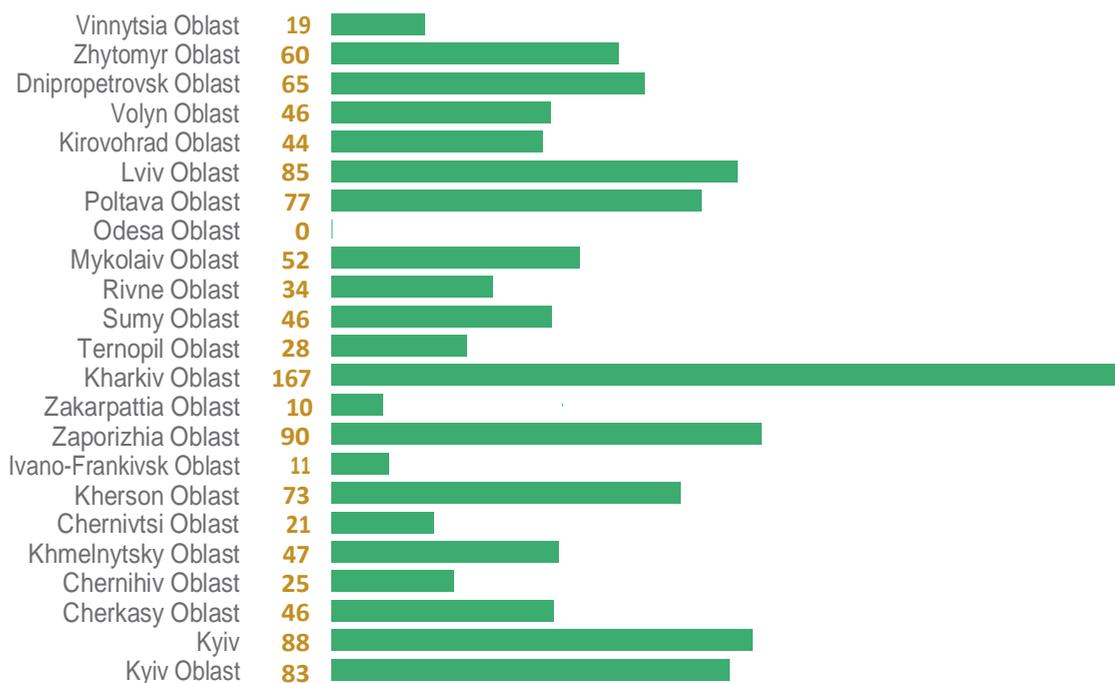


Figure 1
Number of requests for medical aid in 2015

In 2016, the number of such requests rose by a third and totaled 1,666 cases.

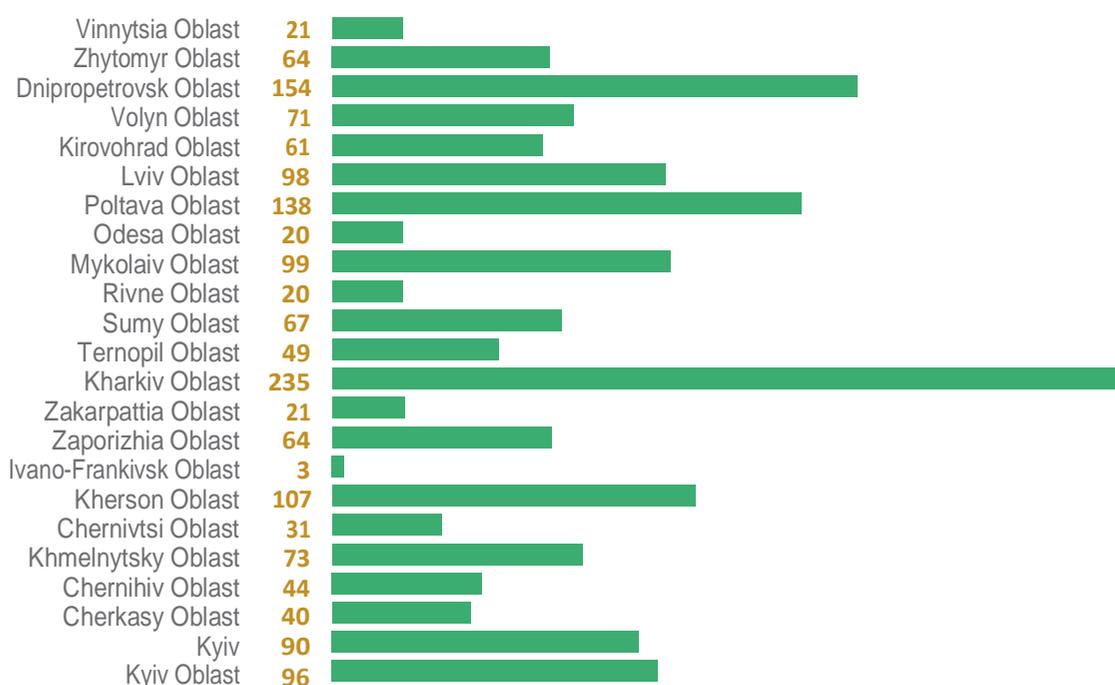


Figure 2
Number of requests for medical aid in 2016

As before, the highest number of requests was recorded in Kharkiv Oblast (235), Dnipropetrovsk Oblast (154), and Poltava Oblast (138 requests). It should be emphasized that the number of such cases is on the rise in other regions as well: Kherson Oblast, Mykolaiv Oblast, Lviv Oblast, Kyiv Oblast and Kyiv.

In 2017, the number of requests rose to 2,386 cases, which, in turn, almost doubles the value recorded in 2015.

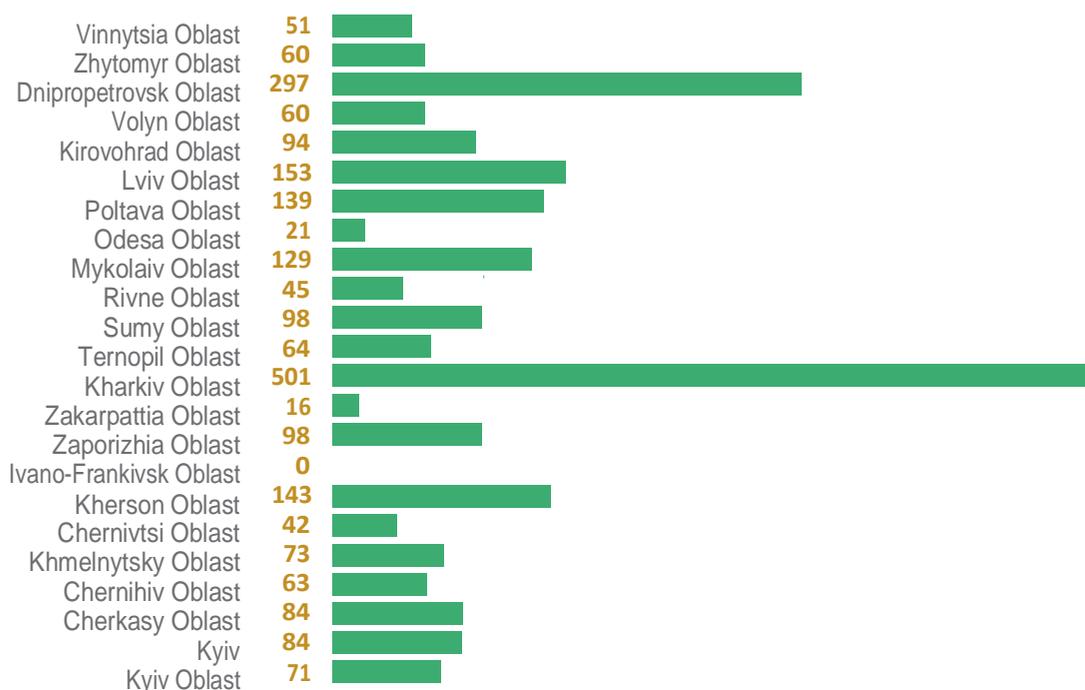


Figure 3
Number of requests for medical aid in 2017

Just as in the previous years, the highest number of requests is recorded in Kharkiv Oblast (501), Dnipropetrovsk Oblast (297), Kherson Oblast (143), Lviv Oblast (153), and Poltava Oblast (139 requests). Figure 4 shows data for all three years.

Given the above information, we can see that the number of requests for medical aid to health care institutions clearly tends to grow in 10 oblasts (Vinnytsia Oblast, Dnipropetrovsk Oblast, Kirovohrad Oblast, Lviv Oblast, Poltava Oblast, Mykolaiv Oblast, Sumy Oblast, Kharkiv Oblast, Kherson Oblast, and Chernihiv Oblast).

Given the different number of residents in each region, we calculated the value of requests per 10,000 residents, which allows assessing data more accurately (see Table 5 and Table 1).

The total value is derived according to the formula below:

$$\frac{\text{Number of requests for the reporting period} \times 10,000}{\text{Average number of residents in the region}}$$

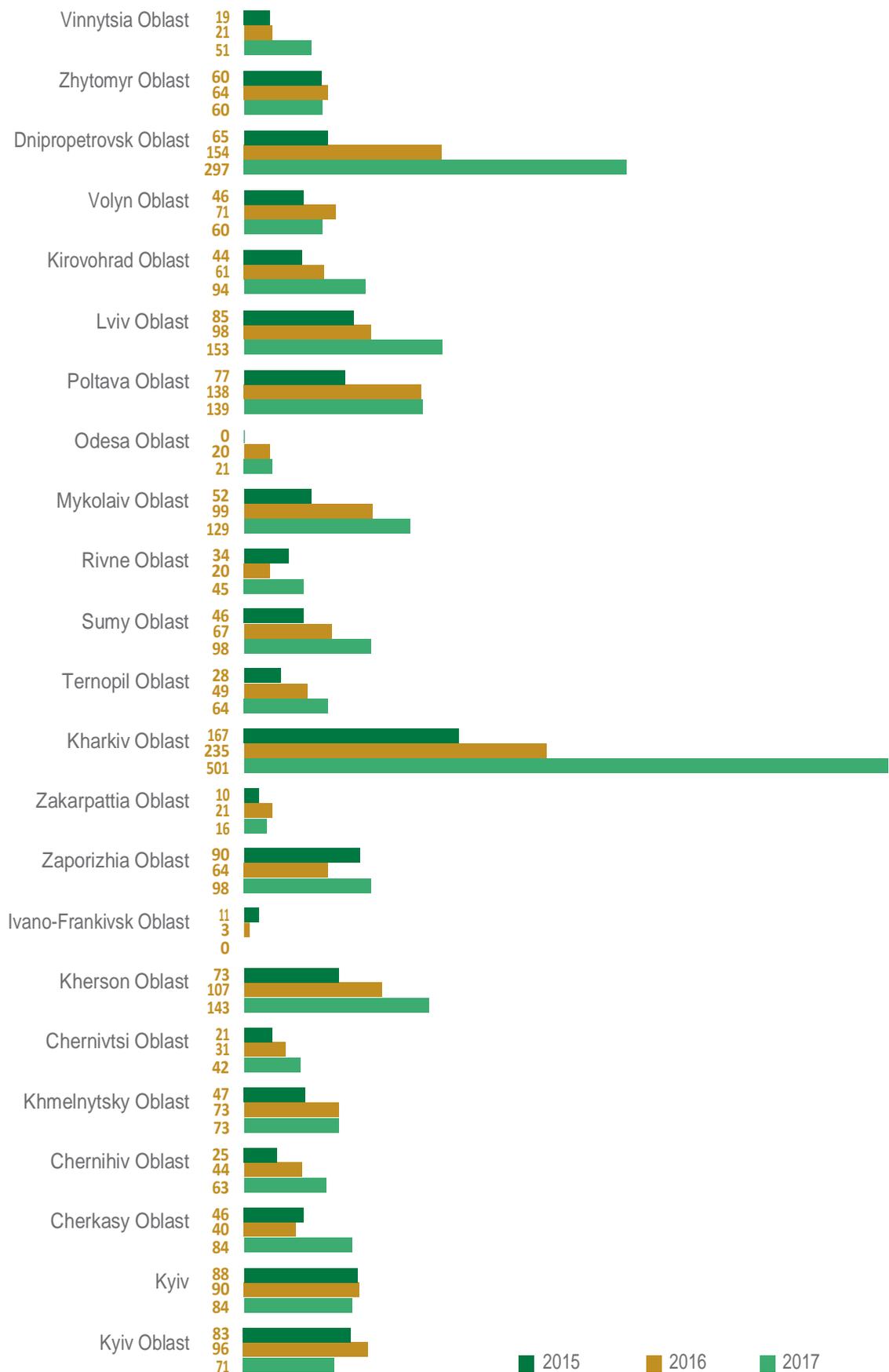


Figure 4
Number of requests for medical aid in 2015-2017

For better illustration, we present the derived data on the map of Ukraine by marking the regions with a low (ranging from 0 to 1), medium (ranging from 1 to 2), and high (more than 2) value of the number of cases when force is used by police officers.



Figure 5
Scale of the use of force by law enforcement officers by regions of Ukraine
(over a period from January 01, 2015 to December 31, 2017)

Taking into account the obtained information, the average number of citizens' requests for medical aid due to bodily harm inflicted by police officers over the last three years in certain regions ranged from 0.10 to 3.34 per 10,000 residents.

The highest values are recorded in Kharkiv Oblast (3.34), Kherson Oblast (3.06), Poltava Oblast (2.48), Mykolaiv Oblast (2.43), and Kirovohrad Oblast (2.06) of Ukraine. The lowest values were recorded in Ivano-Frankivsk Oblast (0.10), Odesa Oblast (0.17), and Zakarpattia Oblast (0.37).

For instance, only 14 requests for medical aid due to bodily harm inflicted by police officers were recorded in Ivano-Frankivsk Oblast over three years. Situation in Odesa Oblast and Zakarpattia Oblast is more or less the same.

It should be noted that a low number of citizens' requests does not automatically mean that cases where police officers use force are rare in the above regions or, accordingly, are highly frequent in other regions. This can be explained by improper registration of such cases by the staff of health care institutions or reluctance of patients to identify individuals that inflicted bodily harm (i.e. failure to state that bodily harm was inflicted by police officers), and this fact leads to misstatement of statistical values.

Table 1
Number of cases where force is used by law enforcement officers by regions of Ukraine (over 2015 - 2017)

Code of the oblast	Oblast	Number of requests	Number of residents in the oblast	Number of requests per 10,000 residents
18	Kharkiv Oblast	903	2,701,188	3.34
19	Kherson Oblast	323	1,055,649	3.06
14	Poltava Oblast	354	1,426,828	2.48
12	Mykolaiv Oblast	280	1,150,126	2.43
10	Kirovohrad Oblast	199	965,756	2.06
16	Sumy Oblast	211	1,104,529	1.91
2	Volyn Oblast	177	1,040,954	1.70
3	Dnipropetrovsk Oblast	516	3,230,411	1.60
20	Khmelnysky Oblast	193	1,285,267	1.50
4	Zhytomyr Oblast	184	1,240,482	1.48
6	Zaporizhia Oblast	252	1,739,488	1.45
9	Kyiv Oblast	250	1,734,471	1.44
21	Cherkasy Oblast	170	1,231,207	1.38
17	Ternopil Oblast	141	1,059,192	1.33
11	Lviv Oblast	336	2,534,027	1.33
23	Chernihiv Oblast	132	1,033,412	1.28
22	Chernivtsi Oblast	94	908,120	1.04
8	Kyiv	262	2,925,760	0.90
15	Rivne Oblast	99	1,162,763	0.85
1	Vinnytsia Oblast	91	1,590,357	0.57
5	Zakarpattia Oblast	47	1,258,777	0.37
13	Odesa Oblast	41	2 386 516	0.17
7	Ivano-Frankivsk Oblast	14	1 379 915	0.10

As we already mentioned, we analyzed the scale of ill-treatment by finding out the opinion of experts dealing with this issue. It should be noted that the opinions of experts differ: some believe that the number of cases of ill-treatment in the activities of the police has declined mostly as a result of changes in criminal procedure laws:

JUDGES:

"As far as I can judge from cases, dynamics are declining. It is difficult to say to what scale it is real. Based on my observations, such practices are becoming less frequent. In my opinion, this is because a part of motivation is no more relevant. In the past, testimonies were needed as they could be used in court upon being extracted in any way and then used; but today these testimonies are not taken into account so the use of force to obtain them is probably impracticable. Strange as it may seem, I believe that even the National Police tends to use some practices inherited from the past. All the same, if an individual confesses to being guilty, they believe that the case investigation is successful";

In my opinion, complaints about torture are now much more rare. However, people now inform about it less frequently";

"Considerable changes have taken place over the last few years; therefore, cases of ill-treatment are now less frequent";

"The number of cases of torture is declining, perhaps because there are now people with a new view on the police functions. As regards the scale in general, over the last 5 years, when I used to work for a human rights organization, I believe I didn't receive any complaints about torture practiced after 2013. I suspected that torture could be practiced in a more cunning way by removing the traces; however, it showed that the police tended to practice torture less frequently"⁶.

INVESTIGATORS:

"Practice shows that such violence does take place. It is normally not physical. I do not know of such practices now, but psychological pressure is still used and an individual finds himself/herself in a confined space";

"No one gets beaten now. Such practices may still be used in some remote areas, but they are not typical for Kyiv"⁷.

PROSECUTORS:

"The situation with torture and cruel ill-treatment has changed indeed over the last few years. I think that this is a result of reforms pursued in our country and changes in legislation; an acknowledgment of guilt has been removed from the Criminal Procedure Code";

"Cases of torture and ill-treatment of detained or arrested people are much rarer now; I have encountered ill-treatment in 2 or 3 cases over the last four years"⁸.

DISTRICT OFFICER:

"Practices tend to improve now and human rights are violated less frequently; however, such practices still exist"⁹.

At the same time, other experts say that, on the contrary, there have been no changes and the situation has even worsened in certain fields:

DISTRICT OFFICER:

"I could say that no changes have practically took place as the system of achievements has never been abolished and crime solutions are regularly wanted. This is about field work. Investigators do not use violence against detainees or suspects because they do not need to; they just make procedural documents and conduct an investigation"¹⁰.

6 Interview with a judge.

7 Focus group with police investigators.

8 Focus group with prosecutors.

9 Interview with a district officer.

10 Interview with a district officer.

LAWYERS:

"I believe that nothing has changed; I sometimes think that things have got even worse. Particularly when it comes to our patrol police (PP). I never saw our former traffic police pummeling, disabling, and pushing people into their cars; now these practices have become commonplace almost in every region. Besides patrol police officers, our district officers continue to work as they used to. Although they say that they act within the legislative frameworks and do not abuse power";

"People were tortured and are still tortured to extract their confessions"¹¹.

PROSECUTORS:

"However, such facts do exist and, although an acknowledgment of guilt does not exist as a document, there are claims that violence is used to extract confessions";

"When a person is taken to a remand prison, he/she immediately writes that he/she was beaten while being arrested in a specific area. And this has been actually happening quite frequently recently"¹².

1.2 TYPES OF BODILY HARM CAUSED BY POLICE OFFICERS

13

From a medical standpoint, bodily harm is defined as anatomic disintegration of tissues, organs, and disruption of their functions, which is a consequence of one or several external injure factors: physical, chemical, biological, psychical.

According to the results of analyzed statistics of health care institutions for 3 years (2015 - 2017), we obtained information on the structure of harm by localization and types (Figure 6 and Table 2).



Figure 6
Type (area) of inflicted injuries (2015 - 2017)

¹¹ Focus group with lawyers.

¹² Focus group with prosecutors.

¹³ Order No. 6 of the Ministry of Health Care of Ukraine "Rules for Forensic Determination of the Bodily Harm Severity Degree" dated January 17, 1995.

Based on obtained information, we can make a preliminary conclusion as to the bodily harm severity, and in certain cases even their creation mechanism (given the circumstances of obtaining them).

Table 2
Information on the area of infliction and types of injuries

Type (area) of an injury	2015	% in 2015	2016	% in 2016	2017	% in 2017	total number of cases	% for three years
head injury	378	31.06	481	28.87	728	30.51	1,587	30.12
combined injuries (head, limbs, body)	339	27.86	438	26.29	518	21.71	1,295	24.58
injury of limbs	131	10.76	266	15.97	353	14.79	750	14.23
body injury	148	12.16	197	11.82	387	16.22	732	13.89
bone fractures	125	10.27	149	8.94	230	9.64	504	9.57
burns/electric injuries	16	1.31	47	2.82	66	2.77	129	2.45
injury of visceral organs	30	2.47	26	1.56	42	1.76	98	1.86
stab, cut, lacerated wounds	17	1.40	30	1.80	33	1.38	80	1.52
gunshot and shell fragment wounds	14	1.151	14	0.84	16	0.67	44	0.84
injuries complicated due to emergencies	13	1.07	6	0.36	8	0.34	27	0.51
injuries of genitals	6	0.49	12	0.72	5	0.21	23	0.44
Total	1,217	100.00	1,666	100.00	2,386	100.00	5,269	100

An analysis of these statistics shows that head injuries represent the highest percentage of injurious exposure accounting for 30.12% of all the types of injuries as well as injuries caused to several areas of the body (head and body injuries, head and limb injuries, head, body, and limb injuries, body and limb injuries): the so called "combined injuries" - 24.58%. The above bodily harm is normally stepped up with brain concussion.

Body injuries accounted for 13.89% of cases, but they should also include injuries of visceral organs - 1.86% of cases, as such injuries go hand in hand with body injuries.

Injuries of limbs accounted for 14.23% of total bodily harm. According to an analysis of information about the circumstances of such injury infliction, most injuries were caused by police officers while arresting or putting handcuffs.

Bone fractures account for 9.57% of cases. They usually include small bone fractures: nose, hands and feet, ribs, lower jaw bone, collarbone, and less frequently large bone fractures: femur, splint bone, tibia.

Burns and electric injuries account for 2.45% of cases. They usually include 1st and 2nd degree eye burns caused by the effect of tear gas. Electric injuries complicated with higher blood pressure were recorded in several cases.

EXTRACT FROM MEDICAL RECORDS:

"Patient Sh. was beaten by police officers on March 06, 2017 at the Kotelva Police Station of the Main Office of the National Police in Poltava Oblast. The patient claimed that policemen applied an electric shocker to his ears. Diagnosis "Uncomplicated hypertensive crisis. Post-electric injury condition". Outpatient medical aid was provided".

Stab, cut, and lacerated wounds are encountered in 1.52% of cases and do not usually pose a threat to a human life and health.

Gunshot wounds accounted for 0.84% of cases. Gunshot wounds of lower limbs and abdomen are most frequent. Such wounds normally involve injuries of bone tissues, visceral organs, and are aggravated due to bleeding.

It should be emphasized that in 0.51% of cases when medical aid was sought, inflicted bodily harm posed a threat to the human life and health as they led to life threatening consequences (emergencies). Most often, they include:

- traumatic pneumothorax due to rig fractures;
- open craniocerebral traumas with injuries to the brain lining or brain matter with skull splinters;
- ruptures of visceral organs aggravated due to hemoperitoneum (abdomen hemorrhage).

Extract from medical records:

"On September 04, 2017, patient G. requested aid from Public Institution "Voznesensk Central District Hospital" claiming to have been beaten by police officers. A diagnosis was established upon examination: Closed chest injury. Right sided pneumothorax. Rib fracture on the left".

In 0.44% of cases (23 requests for aid), bodily harm is inflicted in the area of genitals. Some of them got aggravated due to hematuria (bleeding from the urinary tract). Such injuries cause severe physical pain and sufferings to an individual and, given their infliction area, they could not have been done by police officers accidentally or unintentionally.

It should also be added that, according to an analysis of obtained medical statistics, we revealed three cases when police officers inflicted a blunt injury to the abdomen of pregnant women (pregnancy period: from 16 to 22 weeks), which posed a threat of miscarriage. Although such cases are quite rare, these facts should not be ignored because injuries that disrupted pregnancy, regardless of its period, are defined as severe ones, if such injuries directly lead to pregnancy disruption¹⁴.

From this perspective, we should mention practices of the European Court of Human Rights as regards the determination of the minimum cruelty level necessary to qualify bodily harm under Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

¹⁴ Order No. 6 of the Ministry of Health Care of Ukraine "Rules for Forensic Determination of the Bodily Harm Severity Degree" dated January 17, 1995.

Thus, in particular in cases *Skorokhodov vs. Ukraine* and *Teslenko vs. Ukraine*, claimants had the following bodily harm: closed craniocerebral injury, bruises on their faces and heads, multiple hemorrhages, cut wounds, injuries of visceral organs, injuries of genitals, bruises and hemorrhages in limbs.

In total, such bodily harm, given the purposes and cruelty of treatment, is defined as torture pursuant to Article 3 of the Convention ¹⁵.

1.3 TYPES OF MEDICAL AID PROVIDED TO VICTIMS AS A RESULT OF THE USE OF FORCE BY POLICE OFFICERS

We also analyzed the type of medical aid provided to individuals due to bodily harm inflicted by police officers.

Thus, based on obtained statistics presented in Figure 7 and Table 3, the number of cases of medical aid provided on an outpatient basis tends to slightly grow and, accordingly, the share of hospital treatment is declining. Besides, rejections of medical aid provided on an inpatient basis tend to grow.

Table 3
Information on medical aid provided to victims of bodily harm

Medical aid type	2015	% in 2015	2016	% in 2016	2017	% in 2017	total number of cases	% for three years
outpatient treatment	897	73.71	1,171	70.29	1,755	73.55	3,823	72.56
inpatient treatment	215	17.67	274	16.45	376	15.76	865	16.42
an individual needed to be hospitalized, but refused to	62	5.09	89	5.34	158	6.62	309	5.86
other	7	0.58	19	1.14	13	0.54	39	0.74
an individual needed to be additionally consulted (examined)	36	2.96	113	6.78	84	3.52	233	4.42
Total	1,217	100.00	1,666	100.00	2,386	100.00	5,269	100.00

¹⁵ Resolution of the European Court of Human Rights in cases *Skorokhodov vs. Ukraine*, clauses 10, 30, *Teslenko vs. Ukraine*, clauses 101-102.

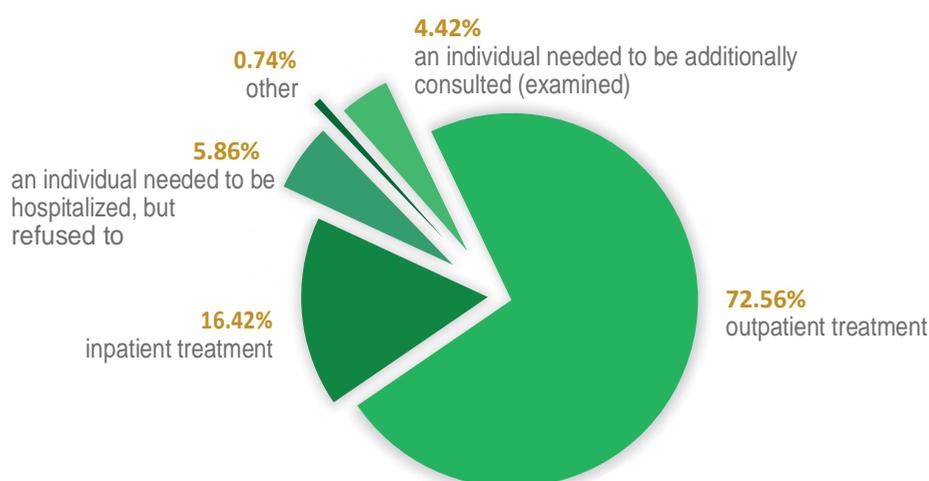


Figure 7
Medical aid type provided due to caused bodily harm (2015-2017)

Based on the analysis results of statistics on the type of received medical aid, we should note that most patients sought and received medical aid on an outpatient basis (3,823 persons). The number of people that received inpatient medical aid is 865 and the period of inpatient treatment normally ranged from 5 to 10 days.

At the same time, such data point out to a real degree of severity of inflicted bodily harm, which is still estimated according to the Rules of forensic determination of the bodily harm severity degree developed in 1995. Pursuant to this Procedure, a lasting health disorder (for over 21 days) is important in determining the average severity degree of bodily harm in the course of a forensic analysis.

However, all the standards and protocols of providing medical aid in case of injuries and diseases have changed since 1995. Modern diagnostic equipment allows conducting necessary diagnostics within a short time period, including that of injuries and their consequences. With this approach, a therapy is assigned without delay and individually, which helps one recover faster. Medicines have become more efficient and the period of taking them is now much shorter. Approaches to the provision of trauma and surgical medical aid and post-operation period have changed. As a result, the period of treatment and, therefore, the time of hospitalization is now much shorter. This thesis is substantiated with data presented in the "National Strategy of the Health Care System Reform in Ukraine for 2015-2020" clearly showing that the number of bed days (when a person receives inpatient treatment) tends to go down in Ukraine for the population from 1995 to 2011.

Given the continuous progress of the medical and pharmaceutical industries, criteria for assessing the degree of the bodily harm severity should be updated as well.

EXTRACT FROM MEDICAL RECORDS:

"Patient P, beaten on January 08, 2017 by the police officers at the police station (21 Pershotravneva St., Sumy). Diagnosis "Multiple injures of soft tissues of the face, superciliary area hematoma.

Traumatic ceramic fracture 11, 21, 22. Closed chest trauma. Left side chest injury." Hospitalized to the neurosurgery department".

EXTRACT FROM MEDICAL RECORDS:

"Patient H., beaten by the police officers on June 26, 2017. Diagnosis "Blunt trauma to the abdomen. Chest injury." Hospitalized to the surgery department of the public institution
"Kremenchuk urgent medical aid hospital".

The number of people that needed but refused to be hospitalized is 309, but these cases and their circumstances must be additionally studied. Thus, in our study we revealed cases where victims rejected medical aid and hospitalization due to being pressurized by the police officers and prosecutors.

Such practices are quite frequently used with respect to individuals who were under control of the police officers and prosecutors when an ambulance was called.

EXTRACT FROM MEDICAL RECORDS:

"Patient L., beaten by the police officers on August 03, 2017 at the Novo-Bavarsky police station. Diagnosis "Closed craniocerebral injury. Brain concussion. Multiple forehead hematomas. Hematoma behind the ears. Lacerated wound of the lower lip". Medical aid was provided. Rejection of hospitalization signed by prosecutor B. Left at the place from where an ambulance was called (at the Novo-Bavarsky police station)".

In addition, it should be noted that statistics of sentences point out to several lethal cases after victims were tortured and ill-treated (see more details in section 3).

SECTION II

CHARACTERISTICS OF THE SUBJECTS, WAYS AND PLACES OF ILL-TREATMENT

2.1

SUBJECTS OF ILL-TREATMENT

Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines the subject of ill-treatment as follows: "... pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other persons acting in an official capacity".

This interpretation means involvement of a public official in the process of inflicting suffering, who either directly inflicts it or instigates the same. Unfortunately, Ukrainian legislation currently mentions only the general subject, i.e. the subject of torture in our country actually may be any mentally competent individual at an age when criminal liability may be used.

Such national legislation non-compliance with international laws caused criticism of international organizations on several occasions, but no amendments have been made to Article 127 of the Criminal Code of Ukraine as regards the definition of the special subject of torture for a long time period.

Taking into account the topic of our study, we analyzed the special subject of ill-treatment by limiting it to the police officers. In our analysis, we departed from the classical characteristics of the subject of offense (age, competency to stand trial) since attainment of the age of 18 and competency to stand trial is a precondition for serving at the law enforcement agencies. Thereat, we were interested in the further details of the subject: identification of the specific police services and units that most often practice ill-treatment in their activities, special ranks and length of service of officers most often practicing ill-treatment at the law enforcement agencies.

An analysis of sentences recorded in the Unified State Register of Court Decisions and passed by the national courts over a period from 2012 to 2017 under Article 127 and Article 365 Section 2 of the Criminal Code of Ukraine shows the following consistent pattern (Figures 8-9).

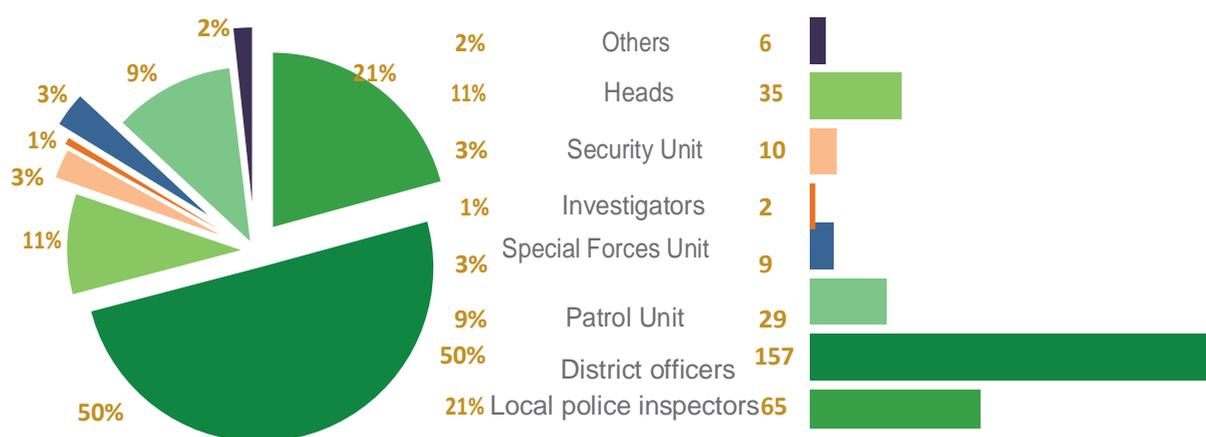


Figure 8
Subjects of torture by the police services and units (%)

Figure 9
Subjects of torture by the police services and units (absolute values)

In 50% of cases of ill-treatment, policemen working as district officers were found guilty.

VICTIMS OF ILL-TREATMENT:

"... I was on the third floor in the office of the municipal police station, room four or five on the left, handcuffed to a wall-mounted iron device. They drove needles under my nails to force me to testify to district officers..."

"... I was arrested by criminal investigation department officers ... they started beating me, I told them that I was not trying to run away. They trussed me up and beat me. Then they took me to the district police station. They held me there overnight..."

"... Special investigative officer Sh. was beating me on the face. Then he was beating me on the head, legs, and back. Another district officer L. was shouting at me, threatening me, and then called my mother to tell her that I would be jailed and that she would never see me alive again. All of this was accompanied by obscenities and threats to me and my relatives ..."¹⁶.

JUDGE:

"... Classically, torture practices are often used by district officers..."¹⁷.

These officers are often the first to deal with individuals suspected of criminal offences, including severe ones. In many cases, the first contact with an arrested individual has no witnesses. The use of illegal methods and force can be explained by an intention to extract as much information as possible from an arrested individual while he/she is under stress and before he/she can get in touch with a lawyer.

Local police inspectors account for 21% (ranking second) of officers prosecuted due to torture and ill-treatment.

¹⁶ Interviews with ill-treated victims.

¹⁷ Interview with a judge.

VICTIM OF ILL-TREATMENT:

"... The police officers came to my home and took me to a woodline outside the village. Their group consisted of a local police inspector, a trainee ... They began to orally threaten me ... They hit my chest, put a loop on my legs and hung me on a cherry tree upside down ..."¹⁸.

EXTRACT FROM A COURT DECISION:

"... PERSON_2, acting in his capacity as a local police inspector ..., against the background of his sudden personal hostile attitude towards PERSON_3 due to the latter's refusal to sign an administrative offense report, hit PERSON_3 on the face and, as a consequence, the latter fell on the floor, PERSON_2 kicked him 5 to 10 times in different areas of the body, namely his head, body, left arm, and then ordered him to leave the room..."¹⁹.

Local police inspectors most often get in touch with individuals, who, as they know, are inclined to commit a certain type of criminal or administrative offenses in the area inspectors are responsible for. The use of force and illegal methods of influence is explained by an intention to obtain a prompt result and lack of skills in the tactics of interrogating a suspect.

Particular concerns are raised due to senior police officers' involvement in torture. As the reviewed judicial verdicts show, individuals that held senior positions (from a sector head to a head of the municipal or district police station) accounted for 11% of all the categories of the police officers prosecuted for ill-treatment practices.

EXTRACT FROM A COURT DECISION:

"... I was hit by the police chief only ... When pummeling PERSON_1, he hit the local police inspector PERSON_10 on his nose; as bleeding began, PERSON_10 left the room ..."²⁰.

EXTRACT FROM A COURT DECISION:

"... Victims PERSON_1 and PERSON_2 explained to the court that ... they were taken to the premises ... of the municipal police station; once each of them was taken to separate staff rooms, police chief PERSON_6 came in and inflicted bodily harm to each of them. ..."²¹.

EXTRACT FROM A COURT DECISION:

"... Having heard the Azerbaijani language, the police chief came up to him, grabbed his neck and pushed him off the stool onto the floor, then hit him on the back of the head and kicked him on the buttocks several times..."²².

Ill-treatment of detained persons by superiors make their subordinated officers believe that any ill-treatment practices are not only allowed, but even necessary. And in case of any problems, the superior will always protect.

18 Interview with an ill-treated victim.

19 Sentence of the Khmelnytskyi Municipal & District Court of Khmelnytskyi Oblast dated December 05, 2013 (case No. 686/6947/13-k).

20 Sentence of the Slavutych Municipal Court of Kyiv Oblast dated June 07, 2013 (case No. 377/525/13-k).

21 Sentence of the Slavutych Municipal Court of Kyiv Oblast dated November 20, 2013 (case No. 377/444/13-k).

22 Sentence of the Murovani Kurylivtsi District Court of Vinnytsia Oblast dated April 22, 2013 (case No. 216/421/12).

Other services, representatives of which use ill-treatment practices, also include officers of the patrol service - 9%, special forces units - 3%, security units - 3%, investigative units - 1%.

The results of focus groups with the members of the Bar, prosecutors, and representatives of the judicial authority support the above conclusions. An absolute majority of the surveyed people state that district officers use ill-treatment practices most of all.

PROSECUTOR:

"... Most complaints were about beatings by officers of the police field units..."²³.

Some experts point out that ill-treatment practices have been used more often by the new patrol police lately.

LAWYER:

"... The situation is now even worse, particularly when it comes to our patrol police. Before, I never saw the road traffic police pummeling, disabling, and pushing people into their cars; now these practices have become commonplace almost in every region..."²⁴.

PROSECUTOR:

"... There are also cases when people are beaten by the patrol police officers. The main reason behind such practices is that the patrol police officers do not know the force use procedure ..." ²⁵.

VICTIM OF ILL-TREATMENT:

"...A patrol police inspector came up and hit me with his arm in the groin ... Then they handcuffed me. Afterwards, they pushed me into the car. One patrol officer took the wheel, while the other one began pummeling me on the head with his elbows. ... About ten blows were inflicted..."²⁶.

PROSECUTOR:

"... People normally complain that the newly founded patrol police officers use force while arresting people..."²⁷.

Some members of focus groups say that officers of investigative units use ill-treatment practices.

VICTIMS OF ILL-TREATMENT:

"...They took me to the police station, then to a room. At first, officers hit my abdomen, used torture, tried to break my fingers. Then they took me to a different room. Five men in civil clothes came in, put on handcuffs and began to beat me on my head with bottles filled with water, they kicked me, put a gas mask on my head and blocked the air flow, hung on a stick and beat me severely on my ears with a bottle. ... The investigator came up several times suggesting that I should sign my confession ...".

23 Focus group with prosecutors.

24 Focus group with lawyers.

25 Focus group with prosecutors.

26 Interview with an ill-treated victim.

27 Focus group with prosecutors.

... I agreed with everything that the investigator told me and signed all the procedural documents given to be signed by me... I could not even read them as I felt very bad ..."²⁸.

Furthermore, there were cases during an interrogation, when the escort service officers that do not participate in criminal investigations at all were involved in ill-treatment practices:

LAWYER:

"...The judge secretly ordered the escort service officers to provoke a situation to simulate the court seizure. At this moment, the senior escort officer runs out yelling: "The Court Is Being Attacked!". Everyone is put to the ground, handcuffed, and escort officers deliberately beat the victims. It was deliberately ordered by the judge due to the defendant's active position..."²⁹.

Ill-treatment practices used by officers of the temporary detention centers were recorded as well:

VICTIM OF ILL-TREATMENT:

"... Officers ... of the Main Office of the National Police of Ukraine in ... Oblast refused to escort a drug therapist to receive methadone under the substitution maintenance therapy program. The condition worsened. Withdrawal sickness began..."³⁰

In this case, refusal to provide adequate medical aid is considered to be ill-treatment. In some cases, according to the practices of the European Court of Human Rights, failure to provide medical aid may be considered equal to torture depending on the cruelty of sufferings and their consequences.

In our study, we also tried to identify other common characteristics of the subjects of ill-treatment. Unfortunately, it is almost impossible to find out the average length of service of the police officers according to the analysis results of sentences as such details are not mentioned in most judicial decisions. But using information about a special rank, the average length of service of officers at the law enforcement agencies can be tentatively derived to a certain scale (Figure 10).

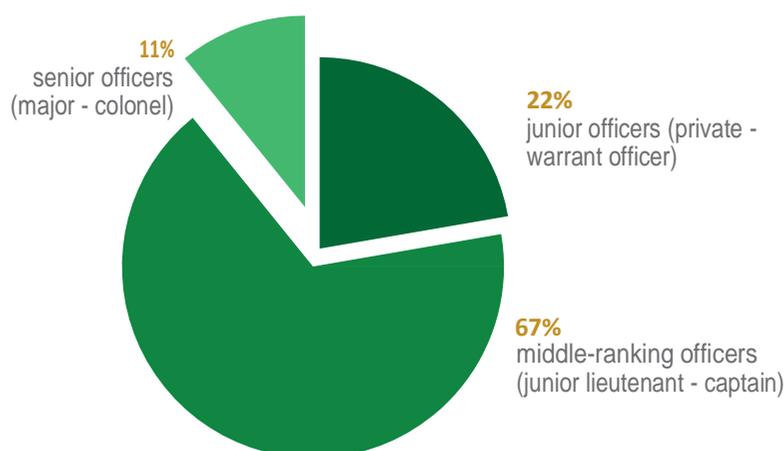


Figure 10
Subjects of ill-treatment broken down by special ranks

²⁸ Interview with an ill-treated victim.

²⁹ Focus group with lawyers.

³⁰ Interview with an ill-treated victim.

A number of tentative conclusions can be made based on the diagram:

- ill-treatment practices are most often used by police officers having higher education - 89% (special officer ranks are usually held by individuals with higher education). In other words, torture and ill-treatment practices are normally used by officers that graduated from universities and most of them have a law degree (relevant education within the system of educational institutions of the Ministry of Internal Affairs (National Police));
- ill-treatment practices are often used by officers working from 1 to 10 years - 67% (the average length of service from the special rank of lieutenant to captain inclusive, provided that an officer was admitted to a law enforcement agency already having higher education). At the same time, 11% of individuals found guilty of ill-treatment had special senior officer ranks from major to colonel. These officers worked at the law enforcement agencies for over 10 years and used ill-treatment practices while having experience of work in different law enforcement areas. All of this suggests that this category of individuals practiced ill-treatment and torture throughout their length of service and "got caught" (prosecuted) accidentally as a result of perseverance of victims of ill-treatment or representatives of the public.

It is important to note that most cases of ill-treatment practices involve two and more police officers (Figure 11).

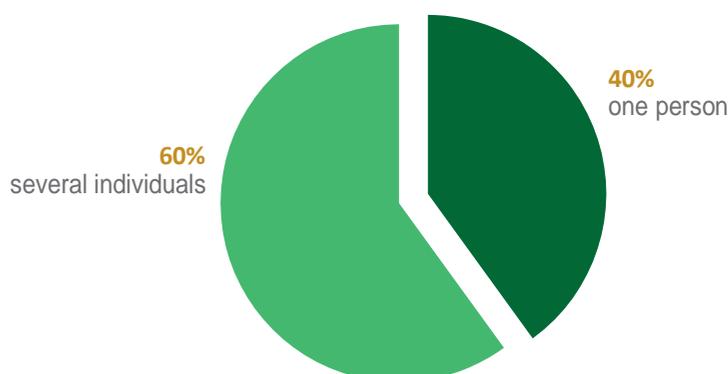


Figure 11
Characteristics of ill-treatment practices used by a group of officers

VICTIM OF ILL-TREATMENT:

"... I was taken away from my home in the morning and brought to the district police station. At first, I was slapped; then I was knocked down. I was beaten by several people..."³¹.

This information points out that illegal acts of police officers such as ill-treatment are often supported by their colleagues. Police officers in cold blood watch their colleagues committing illegal acts (which falls under Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well) or help their colleagues perform acts that are qualified as severe criminal offenses.

31 Interview with an ill-treated victim.

EXTRACT FROM A COURT SENTENCE:

"...The accused PERSON_2, PERSON_3, PERSON_1 clearly overstepped their authority in a deliberate way, wishing to demonstrate their importance and supremacy, being aware that their acts were unlawful and would have consequences ..., they continued their illegal acts.

Thus, the accused PERSON_1, although the victim PERSON_7 was held by the accused PERSON_2 and PERSON_3, deliberately and illegally landed a purposeful blow with his hand on the right side of the forehead of PERSON_7 without warning about his intention to use measures of physical coercion"³².

Considering the issue of the subject of ill-treatment, we find it necessary to show the legal position of the European Court of Human Rights as regards prohibition of ill-treatment practices by private individuals. Article 3 of the Convention requires that the State must take measures aimed at preventing individuals under its jurisdiction from being subjected to ill-treatment, including by private individuals³³. The national authorities should not create an impression that they are ready to leave such treatment without punishment³⁴.

In the process of analyzing some judicial decisions, in particular the sentence of the Yahotyn District Court of Kyiv Oblast (case No. 382/1058/15-k), we found out that apart from the police officers, the arrested individual was also tortured by the victim of the crime that the arrested individual was suspected of committing³⁵. And the crime victim's cruelty is quite shocking.

EXTRACT FROM A COURT SENTENCE:

"... The owner of the slaughter house landed a blow with his left fist on the right eye of the victim; after that, he ignited the gas burner and let the criminal investigation department officers understand that he would use it to torture the victim. Afterwards, he used the gas burner to burn the right thigh, body, and right arm of the victim making the latter suffer from a strong physical pain. Continuing their group criminal intention, one of the criminal investigation department officers delivered two blows with his left fist on the right eye of the victim, one blow with his right fist on the left side of the head above the ear, making the latter suffer from a strong physical pain..."³⁶.

Other criminal cases point out to similar participation of victims in torture.

Actually, based on the above information, we can conclude that certain police officers do not just use ill-treatment practices, but instigate them by enabling private individuals to use violence against the arrested people.

It is widely believed, particularly by officers of the law enforcement agencies, that ill-treatment practices are used quite rarely and only in cases of solving especially grave crimes when

32 Sentence of the Lutsk Municipal & District Court of Volyn Oblast dated September 22, 2016 (case No. 161/1372/16-k).

33 ECHR ruling in cases "Milena Felicia Dumitrescu v. Romania", Clause 50, "O' Keffe v. Ireland", Clause 144.

34 ECHR ruling in the case "Margus v. Croatia", Clause 126.

35 Sentence of the Yahotyn District Court of Kyiv Oblast dated December 27, 2016 (case No. 382/1058/15-k).

36 Sentence of the Shakhtarsk Municipal & District Court of Donetsk Oblast dated November 06, 2012 (case 0554/1867/2012).

no other methods, in their opinion, can help solve the crime. However, as data provided in Figure 12 show, victims of ill-treatment were usually suspected of non-serious criminal (for example, theft - 33%) or even administrative offenses (34%).

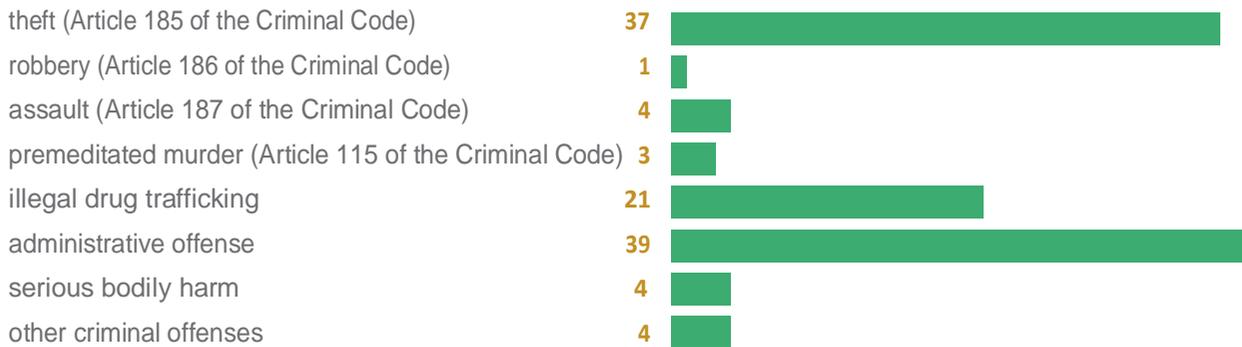


Figure 12
Categories of offenses that victims of ill-treatment were suspected of

These data can mean that ill-treatment is a widely used normal practice of police officers as these categories of crimes are currently the most widespread in Ukraine.

2.2 FORMS AND WAYS OF ILL-TREATMENT BY POLICE OFFICERS

As we mentioned above, in our study we analyzed court sentences based on Article 365 Section 2 and Article 127 of the Criminal Code of Ukraine. Figure 13 presents information about common forms of ill-treatment by police officers (total data under two articles)

It should be noted that this context does not encompass all the cases of the use of force by the law enforcement agencies, namely clear abuse or groundless use of force, which was established by a relevant judicial sentence (see more details about the proportionality of the use of force in Section 3.3).

The analysis results show that common forms include hitting with hands and legs different areas of the body, including the head, which is very likely to lead to serious consequences for the victim.

Apart from blows with hands and legs, common forms of ill-treatment can also include a psychological pressure on the suspect, hitting with rubber truncheons and handcuffing.

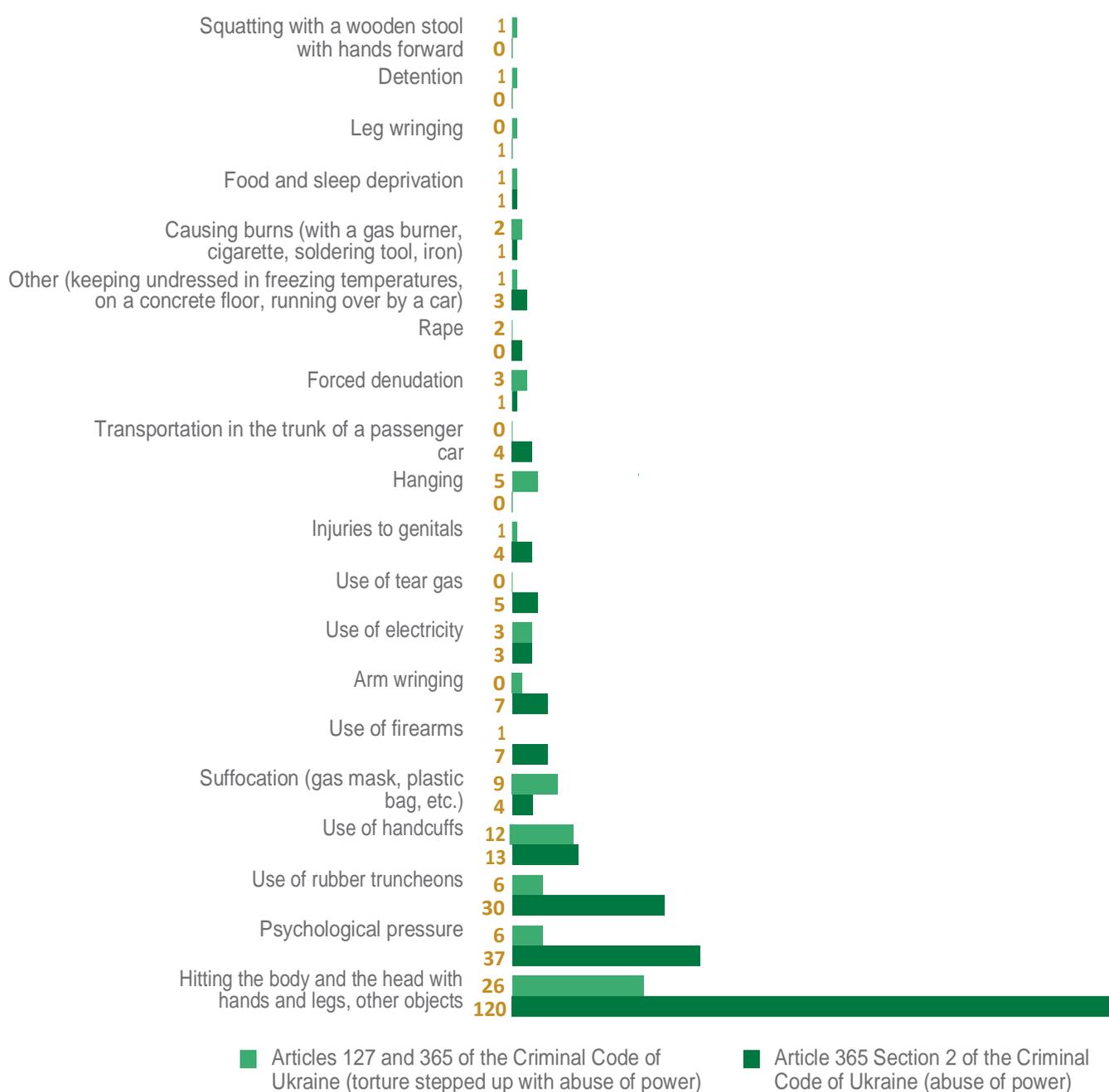


Figure 13

Ill-treatment forms

(in total under Articles 127 and 365 (Section 2) of the Criminal Code of Ukraine)

Special concerns are raised by the cruelest forms of ill-treatment involving particularly severe sufferings caused to the victim. In particular, they include hanging, use of a gas burner and iron, gas mask and plastic bags, use of electricity with respect to the arrested people, etc. Particularly cruel forms of violence also include rape, keeping undressed in freezing temperatures, and the like.

Figure 14 provides information about the cruelest forms of ill-treatment recognized to be torture by the national courts (Article 127 of the Criminal Code of Ukraine).

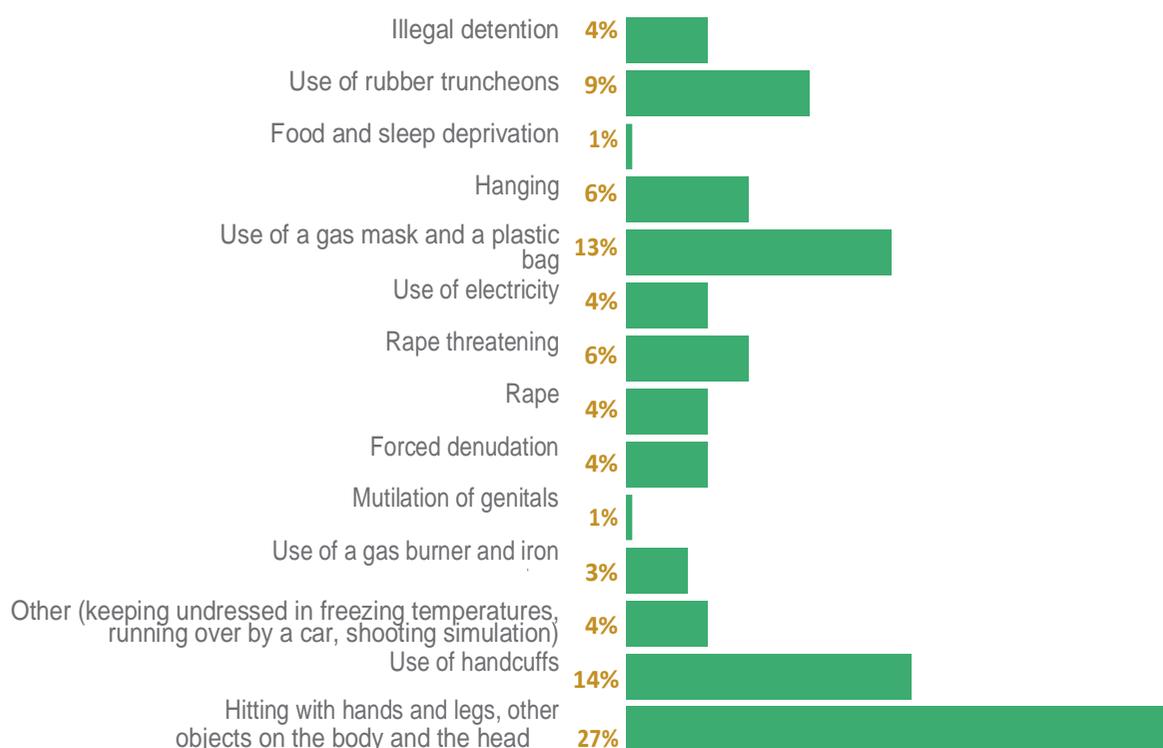


Figure 14
Ill-treatment forms (Article 127 of the Criminal Code of Ukraine)

Here is an extract from court rulings under Article 127 of the Criminal Code of Ukraine, which gives a full idea of the cruelest torture practices used by officers of the law enforcement agencies:

EXTRACT FROM A COURT SENTENCE:

"Having heard the victim's refusal, the police officers pushed him on the floor in the room and began to beat him, inflicting multiple blows with their hands, boots, and a rubber truncheon on the head, body, upper and lower limbs. Afterwards, with the purpose of causing severe sufferings and physical pain, a police officer pressed his foot on the victim's wrist with metal handcuffs on.

Then one of the police officers squeezed the victim's penis with metal pliers causing severe sufferings and pain and tried to use the same pliers to extract his teeth.

In order to stop violence, the victim made at least three blows to himself with metal scissors in the area of the waist on the right"³⁷.

The use of similar practices was confirmed by experts and victims of ill-treatment during a focus group meeting and an interview.

JUDGES:

"According to decisions or complaints included in a case, the use of force mostly involves blows, strangulation, etc. I encountered less frequently such "delicate" acts such as the use of electricity or

³⁷ Sentence of the Shakhtarsk Municipal & District Court of Donetsk Oblast dated November 16, 2012 (case 0554/1867/2012).

attacks on sexual parts, because not every suspect will fully disclose what exactly happened to him/her. For this reason, in average this includes physical and psychological pressure such as threats to them, their relatives suggesting that other proceedings can be initiated, or imprisonment with some specific subjects, i.e. all depends on imagination";

"Classically - physical and psychological violence" ³⁸.

PROSECUTORS:

"There were cases when victims were hit with a commented code on the head, bags were put on the head, stretching devices were used and simply bodily harm was caused to different areas";

"They took me to a woodline, put on a gas mask, brought me handcuffed around the woods for 10 hours; I still had scars from handcuffs for a month later";

"I encountered cases where a victim's body was put in contact with electricity"³⁹.

VICTIMS OF TORTURE:

"At first, the police officers dealt blows to my abdomen, tortured me, tried to break my fingers, and then they took me to the next room. Five men in civil clothes came in, put on handcuffs and began to beat me on my head with bottles filled with water. They kicked me, put a gas mask on my head and blocked the air flow. They hung me on a stick and beat me severely on my ears with a bottle. The torture was severe and I could hardly bear it. When the air flow was blocked, I fainted several times. The investigator came up several times suggesting that I should sign my confession. They tortured me from 10 a.m. to 2 p.m. They locked me in the solitary confinement cell with a man who told me he would stab and eat me by the morning, if I do not confess".

"One of the policemen brought in a fire crowbar, they wrapped my arms with a tape and hung me on that bar. I was screaming because of acute pain, but they kept on beating and intimidating me. They threatened me, warning that if I refused to sign the documents, they would rape me with a rubber truncheon, film it and show it in the prison where I would end up being jailed. Then, while I was still hung up, they put a plastic bag on my head and flowed gas into it ... I fainted. When I regained consciousness, they were laughing and continued torturing me"⁴⁰.

2.3

ILL-TREATMENT PLACE

FAn analysis of sentences recorded in the Unified State Register of Court Decisions and passed by the national courts over a period from 2012 to 2017 under Article 127 and Article 365 Section 2 of the Criminal Code of Ukraine shows that in 41% of cases, victims were tortured in the officers' offices.

³⁸ Interview with a judge.

³⁹ Focus group with prosecutors.

⁴⁰ Interview with an ill-treated victim.

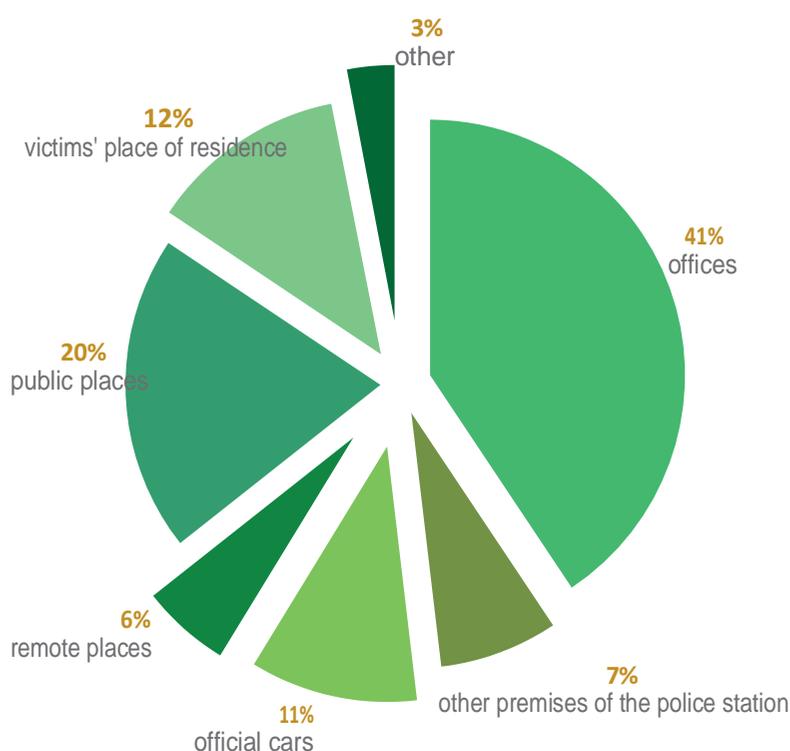


Figure 15
Ill-treatment place

EXTRACT FROM A COURT SENTENCE:

"Being on duty as an official, in his office, PERSON_6 ... deliberately dealt several blows with the palms of both hands to the left and right temples and one blow with the palm of his left hand to the right side of the face of PERSON_2, clearly abusing his power..."⁴¹.

JUDGES:

"... They normally tortured in the offices where interrogation took place ..." ⁴².

This means that it is easier to deal with an arrested individual in the offices as no outsider can access them (for example, a duty officer alerts about the lawyer's visit to the arrested individual), and colleagues, as was mentioned above, normally turn a blind eye on such practices (if they accidentally witness them).

An official car is another place often used for torture. They were used for ill-treatment purposes in 11% of cases.

LAWYER:

"... A person is put in a trunk and on Monday is taken to ... the National Police station. ... This person is detained at the police station without being registered until Wednesday. This person could not be put to the temporary detention center and he begged for food ..." ⁴³.

41 Ruling of the Court of Appeal of Kyiv Oblast dated April 23, 2014 (case No. 377/444/13-k).

42 Interview with a judge.

43 Focus group with lawyers.

VICTIM OF ILL-TREATMENT:

"... Police officers put a bag on his head, handcuffed him, pushed him under the passenger seat in the car and transported him, as it turned out, to ... the police station of the ... city. During the transportation in the car, the police officers were beating him all over the body and the head without explaining anything ..." ⁴⁴.

In the official car, the arrested person is under stress and often does not understand who and why arrested or even kidnapped him/her. Being aware of this condition and using ill-treatment practices, the police officers try to extract as much source information as possible.

In 7% of cases, ill-treatment practices were used in other premises of the territorial police units.

EXTRACT FROM A COURT SENTENCE:

"Continuing intimidation of a minor, abusing their powers, PERSON_5 and PERSON_6 took PERSON_8 to garage NUMBER_3 where they threatened to put on a gas mask on him and block the access of air, after which PERSON_5 and PERSON_6 took him to garage NUMBER_4 where there was a bag with some grass similar to cannabis; PERSON_6 took a handful of grass, powdered it in his hands and threatened to put it to the pocket of PERSON_8 so as to prosecute the latter for drug possession. Afterwards, he ... took PERSON_8 to garage NUMBER_2 where, in the presence of PERSON_5, he put him with his face to the wall, spread his legs at the shoulder width and ordered him to lean against the wall; then, abusing his powers, he dealt 2 to 3 blows on his buttocks with a rubber truncheon" ⁴⁵.

EXTRACT FROM A COURT SENTENCE:

"... Afterwards, at 01:35:12, they all went to the hall connecting the lobby and the patio, where the accused PERSON_1 together with the accused PERSON_2 and PERSON-3 continued to illegally use measures of physical coercion against the victim PERSON_7, without any reasons for that, for a long time period, including until 01:38:25 on July 13, 2015, in particular they dealt multiple deliberate blows with their hands and legs to different areas of the body, causing him bodily harm and physical pain. ..." ⁴⁶.

In 20% of cases, ill-treatment practices are used in public places. In this case, it is important to note that normally such actions of police officers are performed in front of other citizens, which, in its turn, has a negative impact on the public opinion about the police in general.

VICTIM OF ILL-TREATMENT:

"... They hit my face (near the entrance) and when I fell, they kicked me many times ..." ⁴⁷

EXTRACT FROM A COURT SENTENCE:

"... In the courtyard behind the said building on a paved ground, PERSON_5 caught up with PERSON_3 and PERSON_2, who were taking away his grandson, and tried to find out the reason of arrest and the identity of the individuals accompanying his grandson as the individuals taking away his grandson had no police uniform on. After that

44 Interview with an ill-treated victim.

45 Sentence of the Obukhiv District Court of Kyiv Oblast dated April 22, 2013 (case No. 372/396/13-k).

46 Sentence of the Lutsk Municipal & District Court of Volyn Oblast dated September 22, 2016 (case No. 161/1372/16-k).

47 Interview with an ill-treated victim.

PERSON_2, clearly abusing his powers, having turned around towards PERSON_5, deliberately dealt a blow with his fist to the face of PERSON_5 without any reason, and the latter fell ..." 48

In 12% of cases, ill-treatment practices are used at victim's home.

VICTIM OF ILL-TREATMENT:

"... I was near his house. ... The police officers came up and, when I confirmed my identity, they pushed me on the ground and started to kick me all over without explaining anything. I screamed in severe pain and my all neighbors could hear me ..." 49

EXTRACT FROM A COURT SENTENCE:

"... Then PERSON_5, PERSON_6, and PERSON_7 ... unlawfully entered the summer kitchen where PERSON_2 lived with no permission of its owners, and, abusing his powers, PERSON_5 approached PERSON_2 on his bed and, swearing all the time, demanded him to get dressed and follow him ...; when PERSON_2 refused to obey, PERSON_5 dealt several blows to the chest and face of PERSON_2, causing several physical pain to him. Afterwards, PERSON_2 was approached by PERSON_6 and PERSON_7, and according to prior agreement, each of them dealt a blow to his face causing severe physical pain to him; then they were holding his arms while PERSON_5 hit PERSON_2 in the chest several times" 50.

Remote areas away from accidental eyewitnesses are often chosen for ill-treatment practices. For example, arrested people were taken to a wood line for a conversation in 6% of cases.

PROSECUTOR:

"... A case when a person was taken by the police officers to a wood line; the latter used a gas mask and handcuffs for 10 hours ... they kept him handcuffed for almost 24 hours ..." 51.

VICTIM OF ILL-TREATMENT:

"... A police car with two uniformed police officers arrived some time later; they transported the person from a bar outside the resort area and they dropped him, along with two new acquaintances, in a wood line. After the police car left, the individuals alleging to be criminal investigation department officers started to hit him with their hands and legs all over his body and head ..." 52.

During a meeting of the focus group and an interview, experts mentioned temporary detention centers as a place where the detainees are ill-treated. In this case, subjects of ill-treatment are normally not the temporary detention center officers, but district officers, who pressurize the suspects.

LAWYER:

"... In my experience, I encountered cases of torture in temporary detention centers as district officers have unhindered access to the detainees ..." 53.

48 Sentence of the Khust District Court of Zakarpattia Oblast dated October 30, 2012 (case No. 1-74/12).

49 Interview with an ill-treated victim.

50 Sentence of the Chortkiv District Court of Ternopil Oblast dated July 30, 2012 (case No. 1916/688/2012).

51 Focus group with prosecutors.

52 Interview with an ill-treated victim.

53 Focus group with lawyers.

However, since temporary detention centers stopped being headed by the chiefs of police stations and started to be subordinated to heads of the Main Offices of the National Police, the number of ill-treatment practices used in them has declined.

An analysis of health care institutions concerning the places where bodily harm is inflicted and circumstances of it being caused to individuals requesting medical aid actually confirms the list of places where the police officers use force, although it points out to a slightly different ratio (Figure 16).

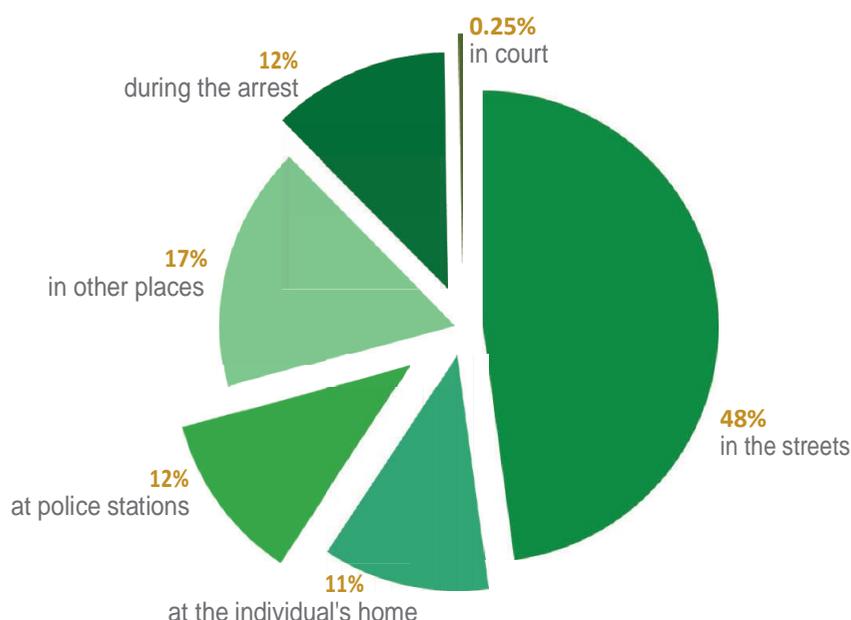


Figure 16
Places (circumstances) of bodily harm infliction (total for 2015 - 2017)

As we can see, almost half of people complain about receiving bodily harm in the streets - 47.86% of all the cases when force was used. In turn, it means that force is used in front of eyewitnesses.

Furthermore, other public places where bodily harm is inflicted account for 16.82% of all the cases (such places mostly include railway stations, night clubs, health care institutions, and even educational institutions).

In 12.11% of cases, bodily harm is caused during the arrest. When examining diagnoses and descriptions of bodily harm prepared by medical staff, we often encountered injuries of limbs, including clear traces of using handcuffs.

In 11.41% and 11.56% of cases, respectively, bodily harm is inflicted at the individual's home or at the police station.

An analysis of the percentage of the ratio of places to circumstances of bodily harm inflicted by years shows that some cases of the use of force in the streets and in public places slightly rose in 2017 as compared to 2015 - 2016. And the percentage ratio of cases happening at police stations and during the arrest is slightly declining (Table 4).

Table 4
Places of ill-treatment practices by years

Place (circumstance) of causing bodily harm	2015	% in 2015	2016	% in 2016	2017	% in 2017	total number of cases	% for three years
in the streets	592	48.64	790	47.42	1,140	47.78	2,522	47.86
at the individual's home	147	12.08	198	11.88	256	10.73	601	11.41
at police stations	168	13.80	182	10.92	259	10.85	609	11.56
in other places	181	14.87	228	13.69	477	19.99	886	16.82
during the arrest	127	10.44	262	15.73	249	10.44	638	12.11
in court	2	0.16	6	0.36	5	0.21	13	0.25
Total	1,217	100.00	1,666	100.00	2,386	100.00	5,269	100.00

The difference between the place identification and statistics of an analysis of judicial decisions can be explained by the fact that health care institutions record all the cases when force was used by the police officers and ill-treatment represents only a certain share of them.

At the same time, the analysis of judicial decisions was based on the facts of torture and abuse of power. Accordingly, torture as the cruelest type of ill-treatment used for a special purpose is practiced in places not accessible by eyewitnesses.

Section III

CAUSES AND CONDITIONS LEADING TO ILL-TREATMENT

3.1

OVERVIEW OF CAUSES AND CONDITIONS CONTRIBUTING TO ILL-TREATMENT

Figure 17 presents information about the causes of ill-treatment practices used by the police officers, which were established during the pre-trial investigation by the prosecutors as well as during the court hearing under Article 127 and Article 365 Section 2 of the Criminal Code of Ukraine. It is under these articles that the pre-trial investigation agencies qualify crimes involving the use of force by officers of the law enforcement agencies (see more details about qualification in Section 3.4.3).

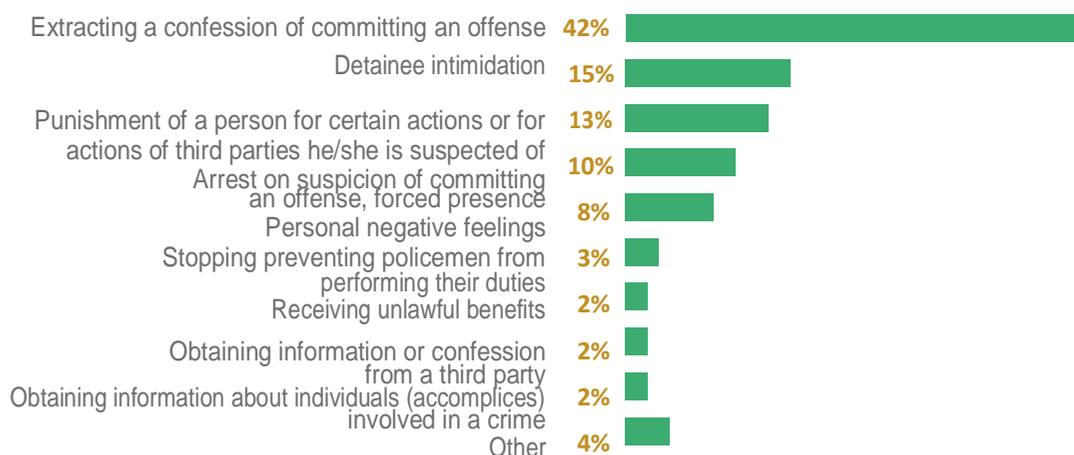


Figure 17
Causes of ill-treatment
(analysis of court sentences under Article 127 and Article 365 Section 2 of the Criminal Code)

As we can see, "obtaining a confession of crime commission" is a leading cause of ill-treatment leaving all other causes far behind it. This category also includes "extracting information or a confession from a third party" as well as "extracting information

about individuals (accomplices) involved in crimes" as the actions of the police officers in all these cases are aimed at obtaining certain information from the detainee. In this case, violence is the main "tool" for obtaining such information.

"Punishment of a person for certain actions or actions of third parties they are suspected of" ranks second among the commonest causes. This category includes quite a wide range of cases: from beating a person for committing an offense to using violence due to unfriendly relations suddenly arising during a conversation between a police officer and a victim of ill-treatment.

The detainee intimidation ranks second. It should be noted that intimidation is normally not a single reason but is rather "an auxiliary measure" for achieving a different objective of ill-treatment. Common forms of intimidation include threats of using physical violence, prosecution for criminal charges, threats with respect to the detainee's close relatives, and the like (see more details about the ill-treatment forms in Section 2.2).

Ill-treatment practices are widely used when the suspect is arrested and normally consist in disproportionate or groundless use of force, which is not triggered by the detainee's behavior or actions (see Section 3.3).

In our study, we recorded cases of torture and cruel treatment aimed at obtaining unlawful benefits. This category normally includes cases of extorting money from the suspects, promising not to bring criminal charges against them. However, there are cases of committing serious common crimes such as robbery. In such cases, the police officers try to disguise their acts to make them appear as procedural activities such as search, for example, by confiscating money and valuables while carrying it out, without due registration.

In the next sections, we will consider some of the causes of ill-treatment with more details as well as conditions leading to such practices. Besides, we will consider a cause such as impunity of the police officers in such cases because, as we know, impunity for a crime encourages new crimes. Torture is a crime subject to criminal liability.

3.2

OBTAINING A CONFESSION AND OTHER TESTIMONIES FROM A SUSPECT

We revised Criminal Code of Ukraine that took effect in late 2012 sets a number of preventive tools aimed at eliminating practices of extracting confessions of being involved in committing crimes from suspects.

Thus, in particular, under Article 87 Section 2 of the Criminal Procedure Code of Ukraine, a court must recognize a number of actions as a material violation

of human rights and fundamental freedoms, including extraction of evidence through torture, cruel, inhuman, or degrading treatment or threats to use such treatment.

Evidence obtained through torture must be rejected by a court during any court hearing, other than hearing of a case of liability for such a material violation of human rights and freedoms, as a result of which this information was obtained ⁵⁴.

An important innovation of the revised Criminal Procedure Code of Ukraine is a regulation, under which a court may base its conclusions only on testimonies it received during the court hearing. The court shall not base its decisions on evidence provided to the investigator, prosecutor, or refer to them ⁵⁵.

The lawmaker also provided an additional guarantee to protect detainees against ill-treatment - freedom from self-revelation and a right not to testify against close relatives and family members, which was added to the general principles of criminal proceedings. According to Article 18 of the Criminal Procedure Code of Ukraine, freedom from self-revelation and a right not to testify against close relatives and family members means as follows:

- no person may be forced to confess to having committed a criminal offense or give explanations, testimonies, which may be used to suspect him/her of a criminal offense or bring charges for committing the same;
- every person has a right to say nothing about a suspicion or charges against him/her, refuse to answer questions at any moment, and be immediately informed about such rights;
- no person may be forced to give explanations or testimonies, which can be used to suspect or bring charges against his/her close relatives or family members for committing a criminal offense.

Unfortunately, the study results show that, despite clear legislative bans, extraction of confessions and other information from suspects through violence is still one of the key methods for solving and investigating criminal offenses.

To prove it, we will cite extracts from judicial decisions on torture practiced after the revised Criminal Procedure Code of Ukraine took effect.

EXTRACT FROM A COURT DECISION:

"PERSON_1 (criminal investigation department officer - editor), intending to make PERSON_5 confess to stealing Internet and telephone cables in Kazanka, clearly abusing his powers as a public official, dealt blows to the ears of PERSON_5 repeating his question about the theft allegedly committed by the latter, but PERSON_5 denied his involvement in the theft. For this reason, PERSON_1 dealt a blow to the neck, several blows to the left side of the body, the lower back of PERSON_5 with a PR-73 rubber truncheon; as a result, the latter fell onto the floor and PERSON_1 kicked him on the buttocks, left and right thighs, and the right arm. In order to make PERSON_5 confess to stealing Internet and telephone cables in Kazanka, PERSON_1 used a rubber truncheon to blow to the latter multiple

54 Article 87 Section 4 of the Criminal Procedure Code of Ukraine.

55 Article 95 Section 4 of the Criminal Procedure Code of Ukraine.

blows to both sides of his legs, arms, the lower back, kidneys, as a result of which PERSON_5 fainted and fell on his back with his right arm being in the door opening, and PERSON_1 deliberately squeezed the thumb of his right hand with the door" ⁵⁶.

EXTRACT FROM A COURT DECISION:

"At about 15:45 on April 27, 2015, in the slaughter house facility located at 82 Tsiolkovsky St., Yahotyn, Kyiv Oblast, PERSON_1, upon being brought to the site by PERSON_7, a local police inspector of the sector of local police inspectors of the Main Office of the Ministry of Internal Affairs of Ukraine in Kyiv Oblast, PERSON_8, and PERSON_7, an officer of the criminal investigation department of the Main Office of the Ministry of Internal Affairs of Ukraine in Kyiv Oblast, PERSON_5, said that he had stolen no meat, after which PERSON_5, PERSON_8, and slaughter house owner PERSON_6 intended to cause physical pain to PERSON_1 by beating, torturing, or other violent actions so as to make the victim write a statement to PERSON_6 that he would return an amount of UAH 9,300 and provide information about individuals that had stolen meat from the slaughter house facility or confess that it was he who had stolen the same.

By carrying implicative actions, PERSON_5, PERSON_8 and PERSON_6 set up a scheme to participate in torture of PERSON_1. Thus, PERSON_6 dealt a blow with his left fist to the victim's right eye, after which he ignited a gas burner to make PERSON_5 and PERSON_8 understand that he would use it to torture PERSON_1. Afterwards, he used the gas burner to burn the right thigh, body, and right arm of PERSON_1, causing severe physical pain to the latter.

Continuing their group criminal intention, PERSON_8 dealt two blows with his left fist on the victim's right eye, one blow with his right fist to the left eye and one blow with his right fist on the left side of the head above the ear, making the latter suffer from strong physical pain" ⁵⁷.

EXTRACT FROM A COURT DECISION:

"He (the suspect - editor) was in his mother's room when the police officers broke the door between the rooms and told him to get out for a conversation. He got out from behind the sofa and the police officers started to beat him. PERSON_11 dealt a blow to the abdomen and others hit the victim several times. PERSON_11 and PERSON_12 wrung the victim's arms and took him out of the building, and PERSON_11 put his fingers to his mouth pulling the lower jawbone downwards. He had no outer garments and shoes. PERSON_10 told his wife to bring a jacket and shoes. PERSON_11 was beating him in the car and PERSON_10 stated that he was about to confess everything.

On their way to the Vilniansk district police station, they stopped the car 1.5 km away from Ukrainka village in a wood line. They took him out of the car and all three of them beat him and kick him all over the body, except for his face, ordering him to confess to the theft. After the beating, PERSON_10 ordered him to stand up, get away from the car, and lay with his face in the snow while stretching his arms sideways. PERSON_10 and PERSON_11 were holding his arms, and PERSON_12 got into the car and ran over his shoulder with the front wheel, namely over his shoulder blade; he felt severe pain. Then, he stood up, put on the jacket and policemen resumed the beating for 20 minutes. They stayed for 1.5 hours in the wood line, beat him all the time, made three 10-minute breaks as policemen got tired" ⁵⁸.

56 Sentence of the Kazanka District Court of Mykolaiv Oblast dated December 28, 2005 (case No. 478/2287/14-k, proceedings No. 1-kp/478/9/2015 (the crime was committed on May 02, 2014)).

57 Sentence of the Yahotyn District Court of Kyiv Oblast dated December 27, 2016 (case No. 382/1058/15-k, proceedings No. 1-kp/382/1/16 (the crime was committed on April 27, 2015)).

58 Sentence of the Vilniansk District Court of Zaporizhia Oblast dated January 12, 2015 (case No. 314/1949/13-k, proceedings No. 1-kp/314/3/2015 (the crime was committed on January 15, 2013)).

We received similar information when talking to victims of ill-treatment and interviewing experts and during focus groups meetings.

VICTIM OF TORTURE.

"On August 14, 2017, it turned out that we came to the Nova Kakhovka police station where I was pushed to a room on the second floor. There were other civil people in the room, one of whom hit me in the chest and I fell. They started to beat and intimidate me to make me sign some documents. I was suffering from pain, but refused to sign. Then one of the policemen brought in a fire crowbar, they wrapped my arms with a tape and hung me on that bar ... I screamed in severe pain, but they kept on beating and intimidating me. They threatened me, warning that if I refused to sign the documents, they would rape me with a rubber truncheon, film it and show it in the prison where I would end up being jailed. Then, while I was still hung up, they put a plastic bag on my head and flowed gas into it ... I fainted. When I regained consciousness, they were laughing and continued torturing me".

"... The policemen began to physically pressurize me into signing a full confession, and as I refused to do it they started to beat me. They beat me on the fourth floor of the Dniprovsky police station in an office. They used a book to hit my head, a small bat to hit my knees and back, and then one of the police officers took a plastic bag and passed it to the other one, who filled it with gas from a pepper spray and they put it on my head; then I fainted ...".

"... The police officers took me to a room where they tore an earring off my right ear; everything was in blood; they were forcing me into testifying against my husband that was kept in an opposite room. I was forced to testify due to torture ..." ⁵⁹.

It should be noted that, according to the experts, the adoption of the revised Criminal Procedure Code of Ukraine caused the focus of the use of violence to change: violence currently aims not at extracting a confession from a suspect, but at obtaining evidence of his/her involvement in a crime.

JUDGE:

"Here the point is that a confession goes first by providing information about accomplices and material evidence; evidence is then gathered as a next step after a person confessed something" ⁶⁰.

PROSECUTOR:

"However, such facts do exist and, although an acknowledgment of guilt does not exist as a document, there are claims that violence is used to extract confessions. I think that it is really done to obtain some evidence, find out how it happened, and then look for material evidence or eyewitnesses ... If during a pre-trial investigation, a person confessed and then withdrew his/her testimonies claiming that violence was used, they are automatically rejected; however, based on testimonies given during a pre-trial investigation, other evidence, apart from a confession to a crime, can be found" ⁶¹.

INVESTIGATOR:

"The fact is that in many investigation cases, particularly at the initial phase of investigations, testimonies of "a suspect" are

59 Interviews with victims of torture.

60 Interview with a judge.

61 Focus group with prosecutors.

the starting point for gathering evidence and are the basis for coming up with versions. And there two versions: he/she either lies or tells the truth. One of the methods of further investigation is the verification of testimonies by carrying out investigative procedures" ⁶².

FIELD OFFICERS:

"Practically, violence is used not to extract a confession. But it turns out that it is in this way that the evidence is often obtained";

"The biggest problem is that prosecutors and investigators require evidence, and the key evidence is a person's confession to a crime; it is one of the key ones; material evidence of this person's involvement in a crime is then gathered" ⁶³.

The police investigators and district officers also emphasized the position of certain prosecutors, who actually require a confession as a precondition for hearing a case in court.

INVESTIGATORS:

"If there is damning evidence, even if no confession was obtained, prosecutors ask: "Does he plead guilty?" We answer:

"Mister prosecutor, we have fingerprints, a statement from a pawnshop where he brought these items" ... But the prosecutor does not want to make efforts in court. This happens for various reasons. This also includes poor professional qualities of prosecutors as many people are employed by backstairs influence". A female prosecutor:

"Does he plead guilty?" - "No, he doesn't". - "Then I will think ... find a way to make him plead guilty";

"In case of violent crimes, thefts, hooligan acts, assaults and robberies, where a person's involvement in a crime is to be proved, it happens that prosecutors urge the police officers to obtain a confession" ⁶⁴.

JUDGE:

"Prosecutors, as it were, approve the use of force to a certain extent as, unfortunately, there is no strategic thinking in many cases not as to what will be today, but as to how it will all end up tomorrow. They still think that what they have today is good, and they will wait and see what happens tomorrow. And when the case is heard in court, they will wait and see what the outcome will be - after all, they might not be employed by then" ⁶⁵.

FIELD OFFICER:

"For example, prosecutors will never agree on a suspicion without any important evidence, and a confession to a criminal offense is one of the most important proofs. After a confession, when there is practically a full picture of a crime, evidence may be gathered by district officers and investigators to prove the person's guilt" ⁶⁶.

62 Focus group with police investigators.

63 Interview with district officers.

64 Focus group with police investigators.

65 Interview with a judge.

66 Interview with a district officer.

If violent actions help obtain evidence of a person's involvement in a crime, the police officers try to legalize them, including through investigative procedures. One of the widely used approaches to legalization of evidence through torture is crime re-enactment, during which the suspect allegedly willingly describes the circumstances of a crime and the location of material evidence.

JUDGE:

"They have no strategic thinking; they partly know that a written report will be rejected by a court, so they follow another way and, as it were, legalize a confession during crime re-enactment and present it in court as written acceptable evidence, which is accepted in many cases as judges do not evaluate much that a crime re-enactment report represents half of a written interrogation report, and only the other half is made by the investigator. One has to understand that crime re-enactment today is no re-enactment of events yesterday. Crime re-enactment must have exceptional moments, but in most cases crime re-enactment is used today to legalize a confession. Because this is no more called "an interrogation report", but "an investigative procedure", i.e. we are faced with manipulation (whitewash)" ⁶⁷.

LAWYER:

"They (the police - editor) find a person. Yes, they know that this person committed a crime. They have no evidence. When we read documents, we can see that they pummeled or promised something to our client. And he gave testimonies. Besides, they have nothing. For this reason, they believe that he will confess upon being beaten. It is then filmed during crime re-enactment. And they will use it to support the evidence base. But the evidence base implies that all torture aims at obtaining the evidence base" ⁶⁸.

INVESTIGATOR:

"Without a doubt, the Criminal Procedure Code corrects the current situation, because a person may be forced into incriminating himself/herself. The problem is that other evidence must be gathered. If it is not gathered, a person will not be convicted. But what evidence must be gathered? Sometimes such evidence normally includes self-incriminating testimonies given to investigators, but as part of other investigative procedures. - "Go and show us everything." He went and pointed to something; in the report, they write that he gave testimonies" ⁶⁹.

JUDGE:

"I think that the National Police inherited some trends, some practices from the past. If a person confesses to a crime in the beginning, they believe that the case investigation is successful. If this person changes testimonies, they do not bother. They believe that the first confession, particularly that recorded during crime re-enactment, is a masterpiece of their investigation" ⁷⁰.

It should be separately mentioned that there are various obstacles preventing a legal investigation of criminal offenses from being fully conducted. Therefore,

67 Interview with a judge.

68 Focus group with lawyers.

69 Focus group with police investigators.

70 Interview with a judge.

there are conditions enabling the police officers to use forbidden methods such as extraction of confessions as the simplest method of solving crimes according to the police officers.

Thus, in particular, during interviews and meetings of focus groups with district officers and investigators, we raised the issue of extreme bureaucracy of certain proceedings, in particular when it comes to obtaining eavesdropping warrants and warrants for information retrieval from communication channels. Field officers complained that appeal courts issue such warrants only once a week in contravention of the regulations of the Criminal Procedure Code of Ukraine. This creates extreme difficulties for the police officers and prosecutors, who have to cover long distances and queue in lines as police officers from other towns of the region come on the same day.

FIELD OFFICERS:

"Extracting a confession is the easiest method. For this reason, if they receive relevant information about a person committing a crime or several crimes, for the purposes of covert surveillance or search they have to go through many permissions, huge work, and many agencies. According to my experience, for the purposes of insignificant covert surveillance such as mobile phone eavesdropping or information retrieval from communication channels, we must have a warrant from an appeal court, as far as I know, judges of appeal courts consider a petition once per week even though the Criminal Procedure Code provides that this must be done without delay after an investigator or a district officer or a prosecutor requests it";

"Let us put it this way: if, for instance, there is a regional center located 150 to 200 km away from a community where the police station works, an officer has to go there on a specific day (in case of operational search - a district officer, even the criminal investigation department chief, must go, and in case of covert surveillance - an investigator and a prosecutor must go and the latter must explain why they need a warrant). They must go there physically. If each region has 20 to 30 police stations and departments, one can imagine how many officers come to an appeal court on the same day and how many materials are processed" ⁷¹.

Field officers and investigators particularly pointed out to the fact that they must draft a petition to a court instead of a prosecutor, and even draft resolutions on covert surveillance instead of courts.

FIELD OFFICER:

"A district officer drafts a petition to a court for conducting procedures. He drafts this petition on behalf of a prosecutor. A prosecutor drafts nothing as they passed all those functions to an investigator in case of criminal proceedings and to a district officer in case of search activities. They draft petitions on behalf of a prosecutor and take them to the appeal court. In most cases, if there is a special day at the court for accepting them and a judge cannot physically issue all these decisions on whether to permit or not to permit such procedures, judges require texts of drafted decisions for public/covert surveillance on their behalf, and this is where difficulties for a district officer lie as he/she should not draft these documents both on his/her own behalf, on behalf of the prosecutor, and the judge of the appeal court" ⁷².

⁷¹ Interview with district officers.

⁷² Interview with a district officer.

In this case, the problem gets even more serious as such procedural documents are coded as classified and they may be drafted only on special "classified" computers and then must be taken for approval to the prosecutor and then the judge. In cases when such drafts need to be corrected, an investigator or a district officer must go back to their police station and then cover all that distance again, and sometimes more than once.

However, the real problem arises at the next phase, after receiving the relevant court decision, when printouts of telephone conversations are obtained because a police officer may obtain such data solely at the headquarters of mobile operators, which are located in Kyiv only.

FIELD OFFICER:

"There is also a problem as regards information retrieval from communication channels. After all the difficulties associated with obtaining a court decision, printouts of telephone conversations must be obtained, and one has to collect them only in Kyiv, at the headquarters of mobile operators. In other words, district officers from all over Ukraine come to the capital to queue in long lines to obtain such information. For example, for an officer to come from Zakarpattia Oblast, the road will take a day, and then he/she may stay there for the whole day, he/she risks not having enough time for completing the mission as operators are independent and, although they must comply with a court decision, they have their own working hours and schedules. It happened that officers came and submitted the documents, but were told to collect information the next day as it could not be provided on the same day"⁷³.

The police officers think that electronic document processing between different subjects of the criminal justice system could solve these problems, reduce the time of investigations and the likelihood of unauthorized methods of solving crimes will be lower.

FIELD OFFICER:

"The current inefficient document processing system is still there. If everything goes digital, this would be a great advantage as a district officer or a criminal investigation police chief would not have to go to the prosecutor or judge to have something signed and go to other courts, and then, for example, to Kyiv. Why not facilitate things: there is a certain type of documents in the system, the prosecutor or the investigator approved it, it was forwarded to him/her, and the prosecutor sent it to the judge, the judge considered it, and if he/she needs original documents, then he/she should request them. It would be great to change the document processing system as there would be no delays and the time and process of conducting an investigation would be shorter. Permission is obtained and sent, you receive an answer a day later and shortly after a crime can be solved resulting in less violence"⁷⁴.

The so called score system of evaluation of performance of the police officers has a considerable impact on the use of practices of forcing a suspect into confessing to involvement in a crime. It consists in using quantitative parameters for evaluating performance of the field and investigative police units, which are regularly compared to the similar periods of the previous year (quarter, months). Despite multiple public

⁷³ Interview with a district officer.

⁷⁴ Interview with a district officer.

promises of Arsen Avakov, the Minister of Internal Affairs, to cancel this system, such practices for evaluating performance of the police officers have not actually been changed. Field units are still evaluated according to the number of solved crimes and investigative units are assessed according to the number of cases taken to court.

The main drawback of evaluating the police officers solely according to quantitative parameters consists in shifts of emphases of their work from real fight against crimes to the achievement of parameters. In turn, due to this situation, it may not be important for every officer whether the arrested individual committed a crime - his/her confession to a crime is more important. Moreover, cases when the police officers force an individual into confessing to several unsolved crimes to improve their performance score are still frequent.

FIELD OFFICER:

"Yes, of course, there were cases where people incriminated themselves by confessing to several thefts, and this happens particularly often when they are drug addicts or lead an immoral lifestyle, have no permanent place of residence, etc. If he stole things, it is not important whether he was involved in 2 or 3 thefts, i.e. several other unsolved crimes are attributed to him. This is done because of the score system (parameters)".

INVESTIGATOR:

"We are pressurized and the purpose of a policeman's life consists in holding someone liable. This system strikes people and an investigation is organized so that it becomes the purpose of life. When you took the case to a court, you experience unnatural euphoria. Therefore, we have a system according to which you need nothing but to send a case to a court. But this is wrong. It is better to set free ten guilty people than to punish one innocent person. Policemen must understand that there is nothing to be proud of. A policeman must not be happy when he/she sends a case to a court. This is why these extraction practices are used" ⁷⁵.

INVESTIGATOR:

"Why are other crimes not solved? Because one hundred cases must be taken to the court. And why should I investigate a high-profile and complicated case, if I can ask the Auchan security staff to provide me ten thieves a day. Why should I do anything? And this is a score system" ⁷⁶.

3.3 DISPROPORTIONATE OR ARBITRARY USE OF FORCE WHILE MAKING AN ARREST

In this study, we did not analyze the lawfulness of the arrest as there were sufficient legal grounds. This problem was quite thoroughly studied by us in our other studies conducted with the participation of professionals of the Expert

⁷⁵ Interview with a district officer.

⁷⁶ Focus group with investigators.

Center of Human Rights, in particular in the Study titled "Evaluation of performance of the institution of public officers responsible for the stay of detainees as a mechanism for preventing ill-treatment in the police activities" ⁷⁷ and the "Prosecutor's role at the pre-trial phase of the criminal process" ⁷⁸.

At the same time, an analysis of judicial decisions reveals practices of arrests without any legal grounds that we would like to emphasize in this study, namely:

- transporting an individual to the police station for participating in investigative procedures upon the investigator's order. This practice is common: investigators order field units to bring a person for participation in investigative procedures referring to the requirement of Article 40 of the Criminal Procedure Code of Ukraine.

But this requirement of the investigator is clearly unlawful as Article 40 Section 2 Clause 3 of the Criminal Procedure Code of Ukraine authorizes the investigator to order the relevant field units to conduct investigative (search) procedures and covert surveillance (search). An arrest is not an investigative or search procedure. Therefore, similar orders given to field units are a violation of the applicable laws and are a constituent element of a crime, liability for which is stipulated by Article 371 of the Criminal Code of Ukraine "Knowingly unlawful arrest, forced presence, home arrest or detention".

EXTRACT FROM A COURT SENTENCE:

"At about 14:10 on October 29, 2014 PERSON_3, intending to bring without delay PERSON_6 to the Rivne Municipal Office of the Department of the Ministry of Internal Affairs of Ukraine in Rivne Oblast located at: 4 Pushkina St., Rivne, to investigator A. O. Korunov for participation in investigative procedures of criminal proceedings No. 12014180010005121, as previously agreed, met PERSON_6 near the central entrance to the Adoney cafe and demanded that he should immediately follow him to the investigator, i.e. he summoned PERSON_6 in accordance with the procedure not stipulated by the applicable Criminal Procedure Code of Ukraine or the provisions of other laws and regulations. PERSON_6 rejected this request and said that he would meet the investigator upon receiving an order in accordance with the procedure set forth by law";

- bringing a person to the police station following an order of the local police inspector. It should be noted that a person's arrest under an order of a local police inspector, just as in the case above, is a gross violation of the applicable laws and may be considered as an offense by a police officer, liability for which is provided in Article 371 of the Criminal Code of Ukraine "Knowingly unlawful arrest, forced presence, home arrest or detention".

It can be stated that this time officers of the law enforcement agencies disguise the actual arrest and use the term "forced appearance", which is not legal either, as the applicable laws stipulate clear requirements for both an administrative arrest and an arrest on suspicion of committing a crime.

⁷⁷ <http://ecpl.com.ua/analytics/otsinka-efektyvnosti-sluzhbovyh-osib-vidpovidalnyh-za-zatrymanyh/>.

⁷⁸ <http://ecpl.com.ua/analytics/rol-prokurora-na-dosudovij-stadiji-kryminalnoho-protseesu/>.

EXTRACT FROM A COURT SENTENCE:

"In order to fulfill his official duties and acting within his powers, PERSON_2 (local police inspector - editor) received an order from PERSON_6, a local police inspector of the local police inspector sector of the Komintern District Office of the Kharkiv Municipal Department of the Main Office of the Ministry of Internal Affairs of Ukraine in Kharkiv Oblast, to summon PERSON_7 to administrative station No. 10-11 of the District Office of the Kharkiv Municipal Department of the Main Office of the Ministry of Internal Affairs of Ukraine in Kharkiv Oblast due to a request received by the police from citizens to take action with respect to PERSON_7 due to her unlawful behavior at her place of residence".

Going back to the issue of ill-treatment practices used by the police officers, it should be stressed again that such cases are frequent during the arrest of a suspect and consist in the excessive use of force and special means.

In this context, it must be mentioned that there are detailed international standards regulating the use of force and special means by officers of the law enforcement agencies, which are incorporated in the national legislation as well.

Thus, for instance, according to the fundamental principles of the use of force and firearms by officers of the law enforcement agencies, in each case where the use of force and firearms cannot be avoided, the police officers must:

- (a) show moderation during such use and act in proportion to the offense seriousness and the lawful goal they want to achieve;
- (b) minimize harm and injuries, respect and protect a human life;
- (c) arrange for medical and other aid to be provided to any wounded persons or victims as soon as possible;
- (d) ensure that relatives and close friends of the wounded persons or victims are informed as soon as possible ⁷⁹.

Pursuant to the Law of Ukraine "On the National Police", in the process of exercising powers granted by the law, the police may use police coercive measures, including the use of physical force, special means and firearms ⁸⁰.

Article 43 of the Law of Ukraine "On the National Police" defines a clear procedure for using police coercive measures. Thus, for example, a police officer must warn a person in advance that he/she will use physical force, special means, and firearms and give enough time for complying with the lawful request of the police officer, unless such a delay may endanger the life and health of the person and/or the police officer or lead to other serious consequences, or in the current situation such a warning is unjustified or impossible.

The type and intensity of coercive measures are defined by taking into account a specific situation, nature of an offense, and individual specifics of the person that committed an offense. If there are victims as a result of using coercive measures, policemen must provide urgent medical aid to them.

A police officer may use physical force, including special fighting techniques (close fight), only:

⁷⁹ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27.08-07.09.1990).

⁸⁰ <http://zakon2.rada.gov.ua/laws/show/580-19>.

- to ensure his personal safety and/or safety of other individuals; stop an offense;
- to arrest an offender, if the use of other police measures fails to ensure the policeman's powers granted by law.

The law also sets clear requirements for a police measure (Article 29), under which the chosen police measure must be lawful, necessary, proportional, and efficient.

The chosen police measure is lawful, if it is defined by the law. A police officer may not use any measures other than those permitted by the laws of Ukraine.

The chosen police measure is necessary, if, for exercising the police powers, no other measures can be used, or their use is inefficient, and also, if this measure will cause the least harm to the person it is used against as well as other persons.

The used police measure is proportional if the harm caused to the legally protected human rights and freedoms or social interests does not exceed the good, for the protection of which it is used, or the created threat of causing such harm.

The chosen police measure is efficient, if its use ensures exercise of the police powers.

However, despite the legislative requirements, cases where the police officers do not comply with the force use principles are quite common. On several occasions, The European Court of Human Rights pointed out to non-compliance with these principles by the police officers in its rulings against Ukraine under Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms ⁸¹.

Thus, in particular, the Court emphasizes in its rulings that Article 3 of the Convention does not prohibit to use physical force for the arresting purposes. But such force may be used only if necessary and may not be excessive. Therefore, the Government must prove that the use of force against a suspect during the arrest was caused by the latter's behavior, in which case the use of force was lawful, proportional, and absolutely necessary.

In its report on the results of its visit to Ukraine over a period from November 21, 2016 to November 30, 2016, the European Committee for the Prevention of Torture pointed out again to the Ukrainian Government to the need of regulatory reminding to the police officers that during an arrest no force may be used more than necessary, and, once the arrested person is under control, there are no excuses for hitting him/her (translated by the author). ⁸².

The study results show that the police officers in fact refer to only two of four principles of using force mentioned in Article 29 of the Law "On the National Police", namely to lawfulness and efficiency. Finding that the law gives them

⁸¹ The ECHR ruling in the cases Silenok and Technoservice-Plus v. Ukraine, Aleksakhin v. Ukraine, Buglov v. Ukraine, Serikov v. Ukraine, Savin v. Ukraine, and others.

⁸² Paragraph 16 of the Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21-30.11.2016.

the right to use physical force during an arrest enabling to efficiently, in their opinion, exercise the police powers, the law enforcement officers often forget about the two other principles - necessity and proportionality of the use of force. However, it is important to keep in mind that non-compliance with these principles challenges the lawfulness of the arrest in general, and in some cases, given the seriousness of the consequences for the arrested person, it may include constituent elements of a number of crimes stipulated by the applicable Criminal Code of Ukraine.

In most cases, non-proportional or groundless force during an arrest is used by officers of the field units, local police inspectors, and officers of the patrol police service; most often officers of these structural subdivisions actually get in contact with citizens and arrest suspected offenders.

An analysis of judicial decisions under Article 365 Section 2 of the Criminal Code of Ukraine makes it possible to describe several standard situations of the excessive use of force during an arrest:

- the use of force without warning against a person to be arrested, if he/she does not try to get away or does not actively resist the police officers. In such situations, the police officers normally do not introduce themselves to the arrested person, do not tell him/her the reason for an arrest, and immediately try to use force so as to deliver him/her to the police agency or unit.

EXTRACT FROM A COURT DECISION:

"Victim PERSON_1 told the court that on August 27, 2013, at about 16:00, along with PERSON_9 and PERSON_10, he arrived to his friend PERSON_11 in a Volvo car at ADDRESS_4, where they were drinking coffee and talking for 30 minutes. The car was left in front of the entrance.

When he was leaving, near the entrance he was suddenly attacked by six or so persons in civil clothes, who began to pull him back to the entrance, but he resisted, and they were unable to cope with him. At this moment, they were approached by PERSON_5, who he knew was an officer of the Anti-Organized Crime Unit of the Office of the Ministry of Internal Affairs of Ukraine, and who hit him several times with his foot in his shoe below the knee of the external area of his left leg. He fell due to pain and began to scream, but, upon orders of PERSON_5, he was dragged and put in the play pit about five meters away. He began to scream to draw attention of the police officers and said that his leg was hurting.

Eyewitness PERSON_11 said that he saw PERSON_1 holding a concrete support near the entrance while two men tried to take him away and immobilize his arms behind his back. They were approached by PERSON_5 saying: "Can't you put him on the ground?", and then he hit the left leg of PERSON_1, as a result of which the latter fell.

Eyewitness PERSON_15 said in court that ... she heard someone screaming for help and then saw two men in civil clothes escorting a man known to her as victim PERSON_1. Her apartment is on the second floor near the entrance so she could see quite well what was happening. There were 4 to 5 more men in the courtyard near the building. When PERSON_1 saw her in the window, he asked her to call the police or film everything. One of the men said that they were "friends" and no police should be called. Afterwards, they were approached by another man, who grabbed the clothes of PERSON_1 and dealt several blows with his foot to the left leg below the knee of the victim. The victim fell and was screaming complaining about the pain in his leg. Then the victim dealt a similar blow to the leg, was taken up and put in the play pit"⁸³.

83 Sentence by Desna District Court of Chernihiv dated September 18, 2015 (case No. 750/9827/14, proceedings

An analysis of the court decision makes one conclude that in such situations the arrested persons resist, including so as protect themselves against a group attack of unknown persons. This thesis is supported by testimonies of eyewitnesses that the arrested person tried to call the police. Proper introduction to the suspect in this situation, explanation of the reason for the arrest would seriously reduce, in our opinion, the likelihood of resistance to the lawful actions of law enforcement officers;

- the use of excessive physical force against the person suspected of committing an administrative offense, and also against other persons, who, according to law enforcement officers, interfere with the arrests. Officers of the new patrol police service most often use such actions.

EXTRACT FROM A COURT DECISION:

"Being in charge of maintaining the public order in the territory of the Desna District of the city of Kyiv, patrolling near building No. ... in ... of Kyiv, the patrol police officers saw the Renault Kangoo car, LICENSE PLATE_1, parked on the roadside, with a trail for selling coffee without a state license plate, revealing non-compliance with the Traffic Rules of Ukraine, intending to check the motor vehicle registration documents for the Renault Kangoo car, LICENSE PLATE_1, and the trail for selling coffee, PERSON_1 asked PERSON_5 staying near the said car to provide documents identifying the latter; PERSON_5 answered that he had no such documents with him and that, if necessary, his friend PERSON_3 could bring the documents and phoned the latter. As it was impossible to identify the person on the site, PERSON_5 was asked to go to police station No. 1 of the Desna Police Office for identification purposes; afterwards, PERSON_1 and PERSON_6 being a member of the Fort team ... used physical force against PERSON_5 by making him fall on the ground with his face downwards, and PERSON_1 had his eyebrow injured on the pavement while PERSON_1 was putting a special means - handcuffs on PERSON_5. At this moment, at about 8:00, a Mitsubishi Pajero car, LICENSE PLATE _2 got parked on the sidewalk near him, from which PERSON_3 called by PERSON_7 while talking to the police officers got out and, seeing that officers of the Patrol Police Office of Kyiv of the Patrol Police Department of the National Police of Ukraine PERSON_1 and PERSON_6 used coercive measures and a special means - handcuffs with respect to PERSON_5, approached them and, while filming the event with his Lenovo mobile phone, asked aloud about reasons inspectors of the Patrol Police Service in Kyiv PERSON_1 and PERSON_6 had for arresting PERSON_5; PERSON_6 ordered PERSON_3 to get away and stop interfering with the arrest of a person, otherwise actions of PERSON_3 would be considered as an attack on a police officer; keeping away from officers of the Patrol Police Office PERSON_1 and PERSON_6, who continued to use physical force and special means - handcuffs against PERSON_5, PERSON_3 reiterated aloud his question about the grounds for the arrest of PERSON_5 by inspectors of the Patrol Police Office in the city of Kyiv PERSON_1 and PERSON_6. At that moment, PERSON_1 came up with a criminal scheme to deliberately cause unlawful bodily harm to PERSON_3 ... he got out of the right pocket of his uniform jacket a special means with a substance having a tear and irritant effect - Teren 4-M pepper spray, headed quickly towards PERSON_3 and used a special means with a substance having a tear and irritant effect - Teren 4-M pepper spray against PERSON_3 in a deliberate, unlawful, and unjustified manner,

by directing it and spraying a tear and irritant substance to the face of PERSON_3"⁸⁴.

EXTRACT FROM A COURT DECISION:

"In the process of fighting against unauthorized commerce, at about 15:00 on August 28, 2016, inspector B. of the Police Office came up to PERSON_6, who was selling vegetables near the above public transport stop, and ordered to stop committing an administrative offense, namely trading in an unauthorized place.

At that moment, PERSON_6 was selling potatoes to PERSON_3.

Having noticed this fact, inspector B. of the Police Office, without any adequate reasons, took the arm of PERSON_6 in a coercive and violent manner to lead the latter to his police car so as to make an administrative protocol.

While PERSON_1 was taking PERSON_6 to his police car without any reasons in a coercive manner, they were approached by PERSON_3 and, in order to prevent the said unlawful actions of PERSON_1, forbearing from carrying out any unlawful acts and having no intention to perform the same with respect to him and other persons present, made an oral remark about the unlawful use of physical force with respect to PERSON_6, holding the arm of PERSON_1 with his hand.

PERSON_1, i.e. inspector B. of the Police Office, reacted in an aggressive manner to the remark of PERSON_3, which was not adequate in this situation, and, together with inspector Sh. of the Police Office, deliberately abusing their powers, began to unlawfully use police measures against PERSON_3, which were clearly not necessary, proportional, or efficient in this case, namely, along with PERSON_2, he used close fight techniques with respect to PERSON_3 by wringing his arms behind his back.

In the process of unlawfully using the aforementioned disproportional and inefficient police measures, PERSON_1 and PERSON_2 struck down PERSON_3 onto the pavement, continuing in this way to abuse the powers of law enforcement officers.

While PERSON_3 was lying on the pavement and in no way resisted the above police officers, PERSON_2, continuing to abuse his powers of a law enforcement officer, kept on, without any grounds, using police measures against PERSON_3 such as close fight techniques, namely wrung the latter's left arm, strangulated and threw PERSON_3 over himself to make him fall onto the pavement. At this moment, PERSON_1, continuing to abuse his powers of a law enforcement officer, wrung without any reason the right leg of PERSON_3, who offered and intended to offer no resistance"⁸⁵.

As we can see from an analysis of extracts of judicial decisions, in both cases the patrol police officers clearly used disproportional physical force without any necessity to do so. Moreover, such actions were performed in front of many people, which led to the indignation of citizens, who tried to find out the reasons for the arrest. Requirements of citizens were, in their turn, perceived by the police officers as resistance to their lawful actions and the policemen used force and special measures actually against third-party persons, who committed no offense.

84 Sentence by Desna District Court of Kyiv dated November 30, 2017 (proceedings No. 1-kp/754/93/17, case No. 754/13191/16-k).

85 Sentence by Novozavodsky District Court of Chernihiv dated December 29, 2017 (case No. 751/10808/16-k, proceedings No. 1-kp/751/25/17).

During the focus group meetings, experts pointed out to the use of the excessive physical force by the new patrol police officers:

LAWYER:

"... The situation is now even worse, particularly when it comes to our patrol police. Before, I never saw the road traffic police pummeling, disabling, and pushing people into their cars; now these practices have become commonplace almost in every region..."⁸⁶.

PROSECUTOR:

"... People normally complain that the newly founded patrol police officers use physical force while arresting people..."⁸⁷.

VICTIM OF TORTURE:

"...A patrol police inspector came up and hit me with his arm in the groin ... Then they handcuffed me. Afterwards, they pushed me into the car. One patrol officer took the wheel, while the other one began pummeling me on the head with his elbows. ... About ten blows were inflicted..."⁸⁸.

During the focus group meetings, the patrol police officers pointed out to certain defects in legislation, which actually provoke them in some situations into using force so as to perform their official duties.

For example, one of such defects consists in an impossibility to hold liable a person driving a motor vehicle while intoxicated, in case where the latter locks himself in his car and refuses to produce his driving license to a police officer.

PATROL POLICE OFFICERS:

"This is a bright example where defects in legislation prevent a police officer from performing his/her duties and make him/her abuse his/her powers. A drunk driver is behind the wheel, closed the window and locked the car. We have a duty to prevent him from further driving. Practically, we can just block him using police cars. Stalemate. We are fed up with it. As a result, the patrol police always break the window to drag the drunk driver out and prevent him from driving. But we have no legal powers to break windows";

"I was in a situation where an individual clearly appearing to be drunk, very drunk, did not stop the engine, regularly tried to drive, but failed to do so. The situation was saved only because he was recognized to be a lawyer. Journalists were called in; they came with video cameras, which played a crucial role. But we were going to break the window"⁸⁹.

Actually, in such situations, a patrol police officer has a dilemma: let an intoxicated person continue driving by jeopardizing other road users or third persons, or stop this person by breaking a car window, which is an unlawful act.

⁸⁶ Focus group with lawyers.

⁸⁷ Focus group with prosecutors.

⁸⁸ Interview with a victim of torture.

⁸⁹ Focus group with patrol police officers.

Patrol police officers also said that some of their colleagues are prone to the excessive use of force, in particular those who had worked in the previous police system before working in the patrol police and are used to performing their functional duties in this way. In their opinion, this category also includes some colleagues that fought in the anti-terrorist operation in the east of the country.

PATROL POLICE OFFICERS:

"I had a patrol officer who had fought in the ATO. And in any situation where there was a predisposition in my opinion, he often used excessive force, although he could just stop it. But this is a psychological condition. And I had no influence on the fact that he had proneness to it after fighting in the ATO";

"There is a guy, a former local police officer. And he is used to dealing with people in this way. You can't persuade him that he must not do so. We worked as mates many times and had problems because he went beyond the limits of necessary defense. He often used force in cases where it was not necessary. He always provoked a conflict"⁹⁰.

3.4 PUNISHMENT OF A PERSON FOR CERTAIN ACTIONS OR ACTIONS OF THIRD PARTIES

Punishment of a person for certain acts he/she committed or is suspected of having committed is one of the key causes of ill-treatment. The results of the study show that punishment normally consists in the conscious use of clearly disproportional force with respect to the arrested individual without any necessity, when this individual is already under full control of the law enforcement officer.

In the case below, a law enforcement officer received information about unauthorized fishing and headed for the site to check this fact.

EXTRACT FROM A COURT DECISION:

"On September 30, 2012, at about 05:30, PERSON_2 was on the bank of the Dnipro River near the terminal of Nibulon JV LLC in the Kozatske village council, Beryslav District, Kherson Oblast, and saw victim PERSON_1 and eyewitness PERSON_3 on the bank of the Dnipro River, who came up to the bank in a boat and began to load bags from the boat to the car VAZ 2103, license plate NUMBER_1, and ran to this place.

Afterwards, acting deliberately, clearly abusing his rights and powers of a police officer, PERSON_2 ran towards PERSON_1 and eyewitness PERSON_3 and, without any lawful demands, immediately dealt two blows to victim PERSON_1 that was standing with his back to him - one blow with his fist to the right temple and the other one with his knee to the right side of the body, near the liver.

PERSON_1 began to run away and PERSON_2 pursued him; when he caught up with him 25 to 30 meters away, acting deliberately, clearly abusing his rights and powers

⁹⁰ Focus group with patrol police officers.

of a police officer, he dealt a blow to the neck of PERSON_1, as a result of which the latter fell with his face on the ground.

Continuing to carry out his criminal acts, PERSON_2 sat on the back of PERSON_1, who offered no resistance, grabbed his hair on the head with his left hand, jerked his head upwards by pulling it to the back and, using an object similar to a gun (the model and brand of which could not be established during the pre-trial investigation) to deal, with extreme violence, at least two blows to the right temple and the right jaw bone of PERSON_1, as a result of which the victim fainted.

Then, PERSON_2, holding PERSON_1 that regained consciousness by his clothes with his left hand, took the latter to the victim's car still unlawfully dealing blows with his right hand and foot to the various parts of the body (body and legs), causing physical pain to the victim.

Having brought PERSON_1, who offered no resistance, to the latter's car, PERSON_2, acting unlawfully, intending to make the victim lie on the ground in an unjustified and unlawful manner, dealt several blows to the right leg of PERSON_1 near his knee, as a result of which the victim fell onto the ground.

Again, PERSON_2, acting deliberately and clearly abusing his rights and powers of a police officer, without stopping his deliberate acts and clearly abusing his rights and powers of a police officer, continued to violently deal blows to the liver and right temple of PERSON_1 lying on the ground, as a result of which the victim fainted again"⁹¹.

An analysis of this judicial decision shows that at first, the law enforcement officer used force against the suspect to arrest him, which is clearly disproportional in this situation. And force was used without any warnings with blows being dealt to the life-threatening areas of the head (temple, jaw bone).

Subsequently, when the individual was actually seized and under full control of the law enforcement officer, the use of extremely cruel and life and health threatening violence continued. Such actions may not be explained by the necessity to seize the offender and, in our opinion, they are the law enforcement officer's conscious or unconscious attempt to punish the individual for actions he is suspected of.

In such cases that have become commonplace, the police officers actually pass sentence to the individual and execute it without delay in a way acceptable for them instead of lawfully proving the person's involvement in a crime. And the seriousness of violence used does not always depend on the seriousness of a crime committed as shown in the court sentence below.

EXTRACT FROM A COURT DECISION:

"On December 10, 2014 the police control room of the Melitopol Municipal Station of the Main Department of the Ministry of Internal Affairs of Ukraine in Zaporizhia Oblast received information via the 102 line, at 07:35 from PERSON_4 and at 07:40 from an unidentified person, that PERSON_5 was knocking on the entrance door and was threatening bodily harm at the place of residence of PERSON_4 located at ADDRESS_2.

Accused PERSON_3, being on duty, following an order of PERSON_6, the chief of the field duty inspector of the police control room of the Melitopol Municipal Police Station, arrived at the said address on a call.

⁹¹ Sentence by Beryslav District Court of Kherson Oblast dated September 30, 2016 (case No. 647/2066/15-k, proceedings No. 1-кп/647/15/2016).

On December 10, 2014, at 08:20, accused PERSON_3 brought PERSON_5 to the Melitopol Municipal Station of the Main Department of the Ministry of Internal Affairs of Ukraine in Zaporizhia Oblast located at: 83 Lenina St., Melitopol, Zaporizhia Oblast.

On the same day, at about 08:30, accused PERSON_3, staying in room No. 2 of the Melitopol Municipal Station of the Main Department of the Ministry of Internal Affairs of Ukraine in Zaporizhia Oblast, while recording report series ZP No. 021054 on an administrative offense of PERSON_5 as stipulated by Article 173-2 Section 1 of the Administrative Offenses Code of Ukraine, in contravention of Articles 1, 2, 3, 5, 10, 12, 13 of the Law of Ukraine "On the Police", and violating an oath taken on September 14, 2002, deliberately abusing his official powers, used physical force with respect to PERSON_5 without any reason.

Thus, PERSON_5, as ordered by PERSON_3, came up to the desk at which the accused sat. While PERSON_5 was reading the aforementioned report, accused PERSON_3, clearly abusing his official powers, being aware of the unlawful nature of his actions, deliberately, without any necessity, dealt a blow to the right shoulder of PERSON_5 with his right fist. After that, accused PERSON_3 stood up, left the desk, grabbed PERSON_5 by his upper garments, dealt a blow to the latter's body with his right foot and made him fall onto the floor. Continuing his unlawful actions, accused PERSON_3, seeing that PERSON_5 was on the floor, kept on using physical force against him, in particular, he dealt two blows to the head and body with his foot and two blows to the head of PERSON_5 with his hand. Afterwards, accused PERSON_3 grabbed PERSON_5 by upper garments, took him up from the floor in a coercive manner and brought him to room No. 2"⁹².

The cause of such actions that are clearly inadequate in the situation may include a police officer's troubled mental condition where violence is used as certain "lessening of tensions" due to personal, work-related, or family problems (see more details in Section 3.7).

During our study, we talked to officers of the new patrol police that was formed according to fundamentally different principles than the previous patrol service. During the focus group meetings, we tried to find out what situations of the patrol police officer's daily routine are characterized by the highest risk of practicing ill-treatment.

According to the patrol police officers, the highest risks of ill-treatment are proper for family violence, disorderly conduct, and arrest of an individual driving a vehicle while intoxicated. More detailed information about cases of arresting an individual driving a vehicle while intoxicated were provided in the previous section, so let us examine cases of family violence, disorderly conduct, and alcohol consumption in public places. It is in the above cases that violence used by a police officer as a way of punishing an offender is commonplace.

Disorderly conduct and alcohol consumption in public places (Articles 173 and 178 of the Administrative Offenses Code of Ukraine)

The patrol police officers pointed out to very insignificant punishment, in their opinion, for such offenses and impossibility to really prosecute

⁹² Sentence by Melitopol Municipal & District Court of Zaporizhia Oblast dated April 20, 2017 (case No. 320/4137/15-k, proceedings No. 1-кп/320/17/17).

the offender, which, in turn, creates risks that the patrol police officers may abuse their official powers.

PATROL POLICE OFFICERS:

"When you understand that a fine for consuming alcohol in a public place amounts to UAH 85, and an individual's conduct is really inadequate. Hurls obscenities at everyone and denigrates passers-by. Courts are closed after six p.m. At seven p.m. he starts cursing everybody out in the street. He is drunk. And the worst sanction that may be applied is a fine of UAH 85, if he has documents with him. Due to this desperation, some instable patrol police officers or policemen opt for other methods. He either believes that he will teach him a lesson or thinks that he administers justice in this way";

"As regards the court - we had a situation where we brought an individual for violence and in the end he received the lowest fine. We then asked the judge: "Why is the punishment so weak? We wasted the whole day on him". She answered: "We use this practice. A covert instruction. We always take the side of citizens. If it is possible, if an article provides for a warning, we use it. If the lowest fine - we opt for the lowest fine". Therefore, some do not want to interfere at all, but still others, who are fed up, think as follows: "I had better hit this offender somewhere in a corner, take him to a wood line, that's all. And he will be punished in this way" ⁹³.

Besides, in this case the problem consists in legislative drawbacks as regards definition of the object of offense in Article 173 of the Administrative Offenses Code of Ukraine (disorderly conduct). As legislation does not define the term "obscenities", this results in different judicial practices in such cases.

In this context, the police officers pointed out to cases where the policeman attempting to stop public disorder becomes the subject of such offense. The patrol police officers think that the law must also protect them against denigration of offenders, particularly if such actions are performed publicly. Lack of a protection mechanism results in a disdain for the police officers in particular and for law in general.

Domestic violence (Article 173-2 of the Administrative Offenses Code of Ukraine)

Significant risks of ill-treatment practices by the police officers are typical for cases where a police officer responds to calls involving domestic violence. The problem is that there is actually no efficient mechanism of influence on an offender in Ukraine ⁹⁴.

⁹³ Focus group with patrol police officers.

⁹⁴ New legislation in this area was adopted in early December 2017 (the Law of Ukraine "On amendments to certain laws of Ukraine due to the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence" and the Law of Ukraine "On preventing and combating domestic violence") and provides for tougher punishment for family violence. But the mechanisms stipulated by new legislation are just gaining momentum. Criminal charges for family violence may be brought after January 2019.

PATROL POLICE OFFICERS:

"Every week, during all my shifts I visit this family to see these beaten children, beaten wife, who always cries asking: "Take him away at least overnight so that he can sober up. He is a jewel of a man when he is sober. But when he gets drunk, he is a different person. She always asks me: "Take him away till the morning". I reply: "Where can I take him, to my home?" There is no place for taking him away. They say: "Take him to the holding cell". There is no holding cell (a room for arrested and detained - editor);

"When we began our work, we used to say: "File a complaint and have beatings documented". And then you come a month later, for instance, and she is beaten again: "I did as you said, but there is no result";

"It often happens that the police are called by neighbors; so you come and ask the wife: "Why are you doing nothing?" She says: "Last time you arrived, assigned a fine, I paid it for him, and he came back and beat me even more";

"The husband comes back from a local police inspector, brings an order or a protocol, throws it to his wife:

"You called the police, now you pay the fine" ⁹⁵.

As a result, upon being faced with cases of cruel violence, as there is no possibility to isolate the offender from his victim, there is a high risk that the police officer will try and deal with this problem at his/her discretion.

PATROL POLICE OFFICERS:

"The problem of family violence is very serious in our country because, in case of a commuter belt, there is a large number of residents, and you always face the same situation: when we arrive, we deal with a beaten wife covered with bruises. We take him away, and when he returns, he keeps on beating her, and we go there the following day, and so on. Finally, the patrol police officer takes pity on that woman. And, being a human, the patrol police officer asks himself/herself: "How long can it be tolerated?!". In this case, he can take the offender aside and teach him a lesson;

"For example, when you come on a call and see a man really using physical force. You take him away for making a report. Legislation provides that if the offense cannot be documented on the site, you take him to the police station. But if we can document the case on the site, we do it on the site and we have no reasons for taking him away to the station. He is left at home and continues beating his wife. Or you perceive this provision otherwise, take him away to the police station, make a report there as if you were unable to do it at his home, detain him for three hours; but ultimately, he will be back home and will resume his offenses. Even more furious now. If we talk about a violation of human rights and if we choose to use this trick and take him to the district police station for documentation purposes, given that we can do it at his home, - all of this is an abuse of power.

"It often happens that the wife asks us: "Please keep him at least until the morning"; and you become aware that if you do not take him away, the situation will be even worse, and then there is likelihood to just take him away to somewhere so that it then takes him long to get back home. We had precedents when the patrol police officers took the man away so that he could take a walk and get sober. He is not beaten, he is just set free away from his home" ⁹⁶.

95 Focus group with patrol police officers.

96 Focus group with patrol police officers.

3.5

IMPUNITY OF LAW ENFORCEMENT OFFICERS FOR ILL-TREATMENT

Impunity is one of the key causes of torture and cruel treatment in the activities of law enforcement officers. In its Standards, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment focused on impunity by dedicating a separate section to it, in which it provided, among other things:

"Belief in a possibility to prohibit torture and other forms of cruel treatment is endangered every time when public officials to be held liable for such abuse avoid punishment for their actions. If information about cruel treatment is not followed by a prompt and efficient response, then those prone to practicing ill-treatment of detainees will quickly believe - and for a good reason - that they may do so with impunity. All the efforts aimed at strengthening human rights principles through a policy of careful personnel recruitment and professional training will be undermined. In cases where no efficient response can be made, relevant persons such as colleagues, senior officials, investigative agencies unavoidably contribute to the process of corrosion of values a democratic society relies on.

And on the contrary, when a court judges public officials who give orders, permit, forgive, or are involved in torture or cruel treatment for their actions or errors, this is undoubtedly a signal that no one will tolerate such treatment. Apart from its tremendous deterring effect, such information will also persuade the public that no one is above the rule of law, even those in charge of implementation of its provisions. Becoming aware that all those responsible for cruel treatment come before the court will have a good influence on victims as well"⁹⁷.

The key reasons for impunity of law enforcement officers due to torture, which contribute to such practices in Ukraine, can include:

- deficiencies of criminal legislation as regards qualification of ill-treatment facts;
- lack of an efficient mechanism for investigating torture practices;
- the fact that national courts impose too lenient punishment or release those practicing torture from liability, etc.

We will consider each of these causes in detail.

3.5.1

DEFICIENCIES OF CRIMINAL LEGISLATION AS REGARDS QUALIFICATION OF ILL-TREATMENT FACTS

Under Article 4 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, each signatory state:

⁹⁷ Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf/E (2002) 1 - Rev.2015.

- ensures that all acts of torture are examined under its criminal laws as crimes. This requirement is applied to attempts to torture and actions of any persons involved in torture.
- each signatory state imposes relevant punishment for such crimes according to their serious nature⁹⁸

Liability for torture is stipulated by Article 127 of the Criminal Code of Ukraine. According to the definition provided in section 1 of this article, torture means any act by which severe physical pain or suffering, whether physical or mental, is intentionally inflicted on a person through beatings, suffering, or other violent actions for such purposes as forcing the victim or any other person into performing actions contradicting their will, including obtaining from him/her or that other person any information or confession, or for the purposes of punishing him/her or that other person for actions committed by him/her or that other person or he/she or that other person is suspected of, and also for intimidating or discriminating him/her or other persons.

It should be noted that this definition of the term "torture" almost literally corresponds to the definition provided in Article 1 of the aforementioned UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, apart from one fundamental exception - subject of this crime. The Convention clearly states that

"such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity"⁹⁹.

Therefore, the international standard implies the obligatory involvement of public officials in this crime - as direct torturers or instigators, or at least as persons that were aware of torture, but did not prevent it. At the same time, national criminal legislation refers torture to general crimes with the general subject.

In 2003, the Plenum of the Supreme Court of Ukraine in its resolution "On judicial practices in cases of abuse of power or official powers" clarified the specifics of prosecuting public officials for torture. Here are some extracts from this resolution:

"Violence in case of abuse of power or official powers may be both physical and mental. If physical violence consists in unlawful detention, beatings or blows, infliction of minor or moderately severe bodily harm, torture, and mental violence means a real threat to cause bodily harm to the victim or his/her close relatives, actions of the guilty person must be qualified under Article 365 Section 2 of the Criminal Code.

Actions are painful and degrading (Article 365 Section 2 of the Criminal Code), if they inflict special physical pain or moral suffering to the victim. They may consist in the unlawful use of special means (handcuffs, rubber truncheons, poisonous gas, water jets, etc.), lasting deprivation of food, water, heat, a person abandonment in conditions bad for health, use of fire, electricity, acids, alkali, radioactive substances, poison, as well as degrading, causing mental suffering, mockery, etc.

If in case of abuse of power or official powers, physical violence involved torture, liability for which is stipulated by Article 127 Section 1 of the Criminal Code, used

98 http://zakon2.rada.gov.ua/laws/show/995_085.

99 Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Access mode: http://zakon2.rada.gov.ua/laws/show/995_085.

is covered by Article 365 Section 2 of this Code. If torture involved the constituent elements of crime, liability for which is stipulated by Article 127 Section 2 of the Criminal Code, a public official's actions must be qualified on multiple counts - under Article 127 Section 2 and Article 365 Section 2 of the Criminal Code"¹⁰⁰.

As we can see, by its resolution the Supreme Court of Ukraine defined how exactly to qualify torture used by public officials: the cruelest forms of torture having serious consequences on multiple counts - under Article 127 and 365 (Section 2), and torture resulting in minor or moderately severe bodily harm - under Article 365 Section 1 of the Criminal Code of Ukraine.

However, later (in 2003) the lawmaker often made inconsistent amendments to the aforementioned articles of the Criminal Code of Ukraine stipulating liability for torture crimes.

Thus, for instance, in 2005 the lawmaker added section three to then applicable Article 127: actions stipulated by section one or two of this article, carried out by the law enforcement officers, actually adding the special subject of this crime to the general one. However, this provision was intentionally or accidentally removed in the process of subsequent changes.

In 2008, amendments were made to Article 365 Section 2 of the Criminal Code of Ukraine by adding the phrase "if criteria for torture are not met". Therefore, a public official could be prosecuted under this article only for actions involving violence or a threat to use violence, use of firearms or special measures, or painful and degrading actions, if criteria for torture are not met.

As a result of amendments made, it is currently quite difficult to define the correct legal qualification of actions, the objective element of which fully meets all the criteria for torture, and which are carried out by the law enforcement officers. On the one hand, such actions may not be qualified under Article 365 Section 2 because of the direct instruction of the law provision; on the other hand, a law enforcement officer may not be prosecuted solely under Article 127 as they are not included in the category of crimes committed by public officials and there is no special subject. Qualification of these actions under both Articles 127 and 365 (Section 2) is incorrect from a legal standpoint, because the constituent elements of these crimes are mutually exclusive.

An analysis of judicial decisions under Article 127 and Article 365 Section 2 issued by the national courts over a period from 2012 to 2017 points out to different judicial practices in this area. Most sentences for ill-treatment by law enforcement officers are passed under Article 365 Section 2. Practices of passing sentences under both Articles 127 and 365 (Section 2) are much less frequent. Besides, law enforcement officers were also sentenced only under Article 127 of the Criminal Code of Ukraine.

Figure 13 (see section II) presents data of an analysis of judicial decisions under Article 365 Section 2 and Article 127 in combination of Article 365 Section 2 of the Criminal Code of Ukraine by forms of ill-treatment practices used by law enforcement officers.

An analysis of these data permits to state that the objective element of these crimes is quite similar, and in certain cases it is simply identical and fully corresponds to

¹⁰⁰<http://zakon3.rada.gov.ua/laws/show/v0015700-03>.

the definition of torture. Thus, for instance, the law enforcement officers used electricity, caused burns, used gas burners, a soldering tool, blocked access of air, used a gas mask or a plastic bag, etc. to torture their victims. However, such actions were qualified as abuse of official powers disregarding the criteria for torture.

During interviews with judges, the latter stressed that qualification depends to a large extent on a prosecutor filing a charging document with the court.

JUDGE:

"For a court, it is not a problem if a case is filed with this qualification (Article 127 in combination with Article 365 Section 2 - editor), the problem is whether a prosecutor chooses this qualification. Article 127 may not be used as ordinary people do not torture each other in this way; normally, such practices are used in our country by public officials, and this represents a different, specific qualification. For this reason, ideally it must go in combination, but everything depends on whether a prosecutor will combine Articles 365 and 127" ¹⁰¹.

If a prosecutor qualifies actions solely under Article 365 Section 2, a judge will not increase the scale of accusation by adding Article 127 so as to avoid accusations of being biased.

JUDGE:

"If a case is filed with a court under Article 365 Section 2, a judge will not re-qualify it or add Article 127. In order to add the article, a prosecutor will have to explain what prevented him/her from adding this article in due time. The judge may not reject a charging document. Then the prosecutor will accuse the judge of bias as the latter tells the prosecutor to increase the scale of accusation, and he/she cannot say this. If during a court hearing, a prosecutor suddenly wakes up and says that he/she wants to increase the scale, under the applicable law provisions he/she has to explain what prevented him/her from choosing this double qualification in due time. In other words, these are the things that didn't just come up yesterday, they were there from the very beginning of work on the case" ¹⁰².

There are also other legislative deficiencies when it comes to defining the objective side of a crime, liability for which is stipulated by Article 365 Section 2 of the Criminal Code of Ukraine, in particular as regards definition of the term "material harm", which a crime must cause to the rights and interests of individual citizens, interests of the state or the public, interests of legal entities protected by law.

In 2014, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On amendments to certain laws and regulations of Ukraine in the area of the state anti-corruption policy in connection with the Visa Liberalization Action Plan for Ukraine by the European Union", which, among other things, amended the note to Article 364 of the Criminal Code of Ukraine as regards the material harm definition in Articles 364, 364-1, 365, 365-2, 367.

Under the said Law, the phrase "Material harm in Articles 364, 364-1, 365, 365-2, 367, if it consists in causing material damages, is defined as harm exceeding the non-taxable minimum incomes by one hundred and more times" was replaced with "Material harm in Articles 364, 364-1, 365, 365-2, 367 is defined as harm exceeding the non-taxable minimum incomes by one hundred and more times".

¹⁰¹ Interview with a judge. ¹⁰² Interview with a judge.

As a result of such amendments, the non-material consequences were actually removed from the composition of "material harm", which, according to the aforesaid resolution of the Plenum of the Supreme Court of Ukraine, may include a violation of human and citizen rights and freedoms (right to freedom and personal immunity and immunity of housing, election, labor, housing rights, etc.) protected by the Constitution of Ukraine or other laws, undermining of the reputation and prestige of governmental authorities or local self-government bodies and public order, creation of a situation and conditions making it difficult for an enterprise, institution, organization to perform its duties, covering up crimes ¹⁰³.

While analyzing judicial decisions, we revealed cases where the police officers were acquitted of ill-treatment practices solely because the prosecutors failed to prove that harm exceeding the non-taxable minimum incomes by one hundred and more times and being material harm was caused.

EXTRACT FROM A COURT DECISION:

"The disposition of Article 365 Section 1 of the Criminal Code of Ukraine provides that abuse of power or official powers is defined as deliberate actions performed by a public official clearly going beyond his/her rights or powers, if they caused material harm to the rights and interests of individual citizens, interests of the state or the public, interests of legal entities protected by law.

At the same time, the actual occurrence of material harm is necessary for qualifying a criminal offense stipulated by Article 365 Section 2 of the Criminal Code of Ukraine to be completed, as its constituent elements are material in terms of their structure.

The prosecutors justifying a possibility of qualifying the actions of PERSON_3 under Article 365 Section 2 of the Criminal Code of Ukraine do not emphasize that the accused caused material harm to victims PERSON_6 and PERSON_9. The charging document just says that the violent actions of PERSON_8 caused a severe physical pain to PERSON_6, made the latter faint, and degraded the victim.

The lawmaker defined that abuse of power or official powers is a crime with material constituent elements; therefore, in order to recognize it completed, there must be socially dangerous consequences of the crime committed by a public official.

Under Article 365 of the Criminal Code of Ukraine, these consequences are defined as material harm to the rights and interests of individual citizens, interests of the state or the public, interests of legal entities protected by law. At the same time, criminal legislation does not define any specific cases where harm of an immaterial nature must be recognized to be material one.

The Law of Ukraine No. 1261-VII "On amendments to certain laws and regulations of Ukraine in the area of the state anti-corruption policy in connection with the Visa Liberalisation Action Plan for Ukraine by the European Union" dated May 13, 2014 amended Clause 3 of the note to Article 364 of the Criminal Code of Ukraine, namely: "Material harm in Articles 364, 364-1, 365, 365-2, 367, if it consists in causing material damages, is defined as harm exceeding the non-taxable minimum incomes by one hundred and more times" was replaced with "Material harm in Articles 364, 364-1, 365, 365-2, 367 is defined as harm exceeding the non-taxable minimum incomes by one hundred and more times".

Under these circumstances, after this law was adopted, harm caused by the actions stipulated including by Article 365 Section 2 of the Criminal Code of Ukraine must be solely material,

103 <http://zakon3.rada.gov.ua/laws/show/v0015700-03>.

namely, it must exceed the non-taxable minimum incomes by one hundred and more times.

Therefore, Article 365 of the Criminal Code of Ukraine provides for solely the material nature of harm caused by a criminal offense, and this was not proved by the pre-trial investigating agency. All the circumstances mentioned above make it impossible to prosecute PERSON_3 under Article 28 Section 1, Article 365 Section 2 of the Criminal Code of Ukraine as the actions of PERSON_3 include no constituent elements of this crime.

Taking into account that the court was given no evidence that, by abusing his official powers, PERSON_3 caused harm to the rights and interests of victims PERSON_6 and PERSON_9 protected by law, which exceeds the non-taxable minimum incomes by one hundred and more times and is material harm for them, the court finds that the actions of PERSON_3 include no constituent elements of a crime stipulated by Article 28 Section 1, Article 365 Section 2 of the Criminal Code of Ukraine and he must be acquitted due to the absence of the constituent elements of crime in his actions"¹⁰⁴.

It should be noted that as of January 01, 2018 material harm of 100 non-taxable minimum incomes amounted to UAH 85,000. Therefore, we may state that such "innovations" of the lawmakers have endangered a possibility to prosecute law enforcement officers practicing ill-treatment of citizens.

3.5.2

Lack of an efficient mechanism for investigating ill-treatment cases

One of the key legal positions of the European Court of Human Rights is that when an individual is arrested by the police in a good health condition, but released with injuries, the state must ensure a true explanation of the causes of such injuries, and if it can't, this means that Article 3 of the Convention is violated¹⁰⁵.

Besides, in cases where an individual claims for a good reason that he/she was ill-treated by authority, agency, or public officers in contravention of Article 3 of the Convention, this provision, if interpreted as the general obligation of the state under Article 1 of the Convention, requires an efficient official investigation aimed at identifying and punishing the offenders. Otherwise, the general legal ban on torture and inhuman or degrading treatment or punishment would be practically inefficient despite its fundamental importance, and in some cases the representatives of the state could actually violate the rights of those under their control with impunity¹⁰⁶.

An investigation of well-grounded claims of ill-treatment practices must be thorough and efficient. This means that the governmental authorities must always try to re-enact the events and forbear from relying on rash or ill-grounded conclusions before finishing an investigation or for justifying their decisions¹⁰⁷. They must take any and all necessary and possible measures to obtain evidence with respect to events, including, inter alia, testimonies of eyewitnesses and results of expert evaluations¹⁰⁸.

104 Sentence by Rivne Municipal Court of Rivne Oblast dated April 18, 2016, case No. 569/5017/15-k. 105 ECHR Resolution in the case Tomazi v. France.

106 ECGR Resolutions in cases Assenov and Others v. Bulgaria, Labita v. Italy, and others.

107 ECHR Resolution in cases Assenov and Others v. Bulgaria.

108 ECHR Resolutions in cases Tanrikulu v. Turkey, Gul v. Turkey.

The efficiency of response by the prosecutor's offices of Ukraine to complaints about torture and cruel treatment by the police officers is unambiguously demonstrated by the official statistics of the Prosecutor General's Office of Ukraine concerning the number of criminal proceedings conducted by the prosecutors under Articles 127 and 365 (Section 2) in combination with statistics of health care institutions concerning the number of citizens' requests for medical aid due to bodily harm inflicted by law enforcement officers (see Figure 18).

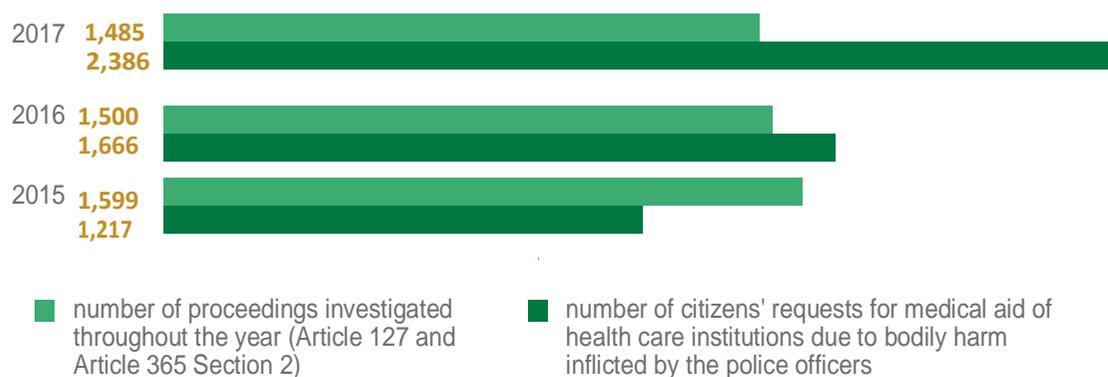


Figure 18
Ratio of the number of requests recorded by health care institutions to the number of initiated criminal proceedings due to torture and cruel treatment (2015 - 2017)

It is quite obvious that the prosecutors receive information about ill-treatment practices from various sources, and not just from health care institutions. Therefore, the number of criminal proceedings initiated by the prosecutors due to ill-treatment could not, anyway, be lower than the number of cases received by the prosecutors from health care institutions.

However, the above statistics show that in 2016 and 2017, the number of proceedings conducted by the prosecutors was much lower than the number of requests for medical aid recorded by health care institutions due to, according to them, bodily harm inflicted by the police officers.

In this case, the problem is that the prosecutors often consider such information not as a crime report as required by the applicable criminal procedure laws, but as ordinary petitions of citizens according to the procedure stipulated by the Law of Ukraine "On petitions of citizens"¹⁰⁹.

According to the requirements of Article 214 Section 1 of the Criminal Procedure Code

"without delay, but not later than in 24 hours upon receiving a petition, a report on a criminal offense or after finding out on their own from any source any information that may point out to a committed criminal offense, an investigator, a prosecutor must record such information in the Unified Register of Pre-Trial Investigations, initiate an investigation and, in 24 hours after recording such information, provide the complainant with an extract from the Unified Register of Pre-Trial Investigations"¹¹⁰.

¹⁰⁹ Section 6 of the Annual Report by the Ukrainian Parliamentary Human Rights Commissioner for 2015.
¹¹⁰ <http://zakon2.rada.gov.ua/laws/show/4651-17/print>.

However, in contravention of the applicable laws, at first, the prosecutors often order internal investigations with respect to such reports, which are conducted by the police. Based on the results of such internal investigations, a prosecutor decides whether criminal proceedings are to be initiated.

On multiple occasions, the European Court of Human Rights emphasized in its resolutions on cases versus Ukraine that such practices are in conflict with the efficient investigation standards. The court argues that a pre-investigation probe (internal investigation - editor) is not a comprehensive investigation and does not meet the principle of an efficient remedy as an investigator (or an individual conducting an internal investigation) may, under this procedure, use only a limited number of procedural actions, and the procedural status of the victim is not defined¹¹¹.

The Court points out to other deficiencies of investigations into petitions and reports on torture practices by the prosecutor's offices of Ukraine:

- failure to ensure the victim's efficient participation in an investigation;
- delays with arrangement of medical evidence;
- failure to find out all the circumstances of inflicting bodily harm to the victim;
- failure to evaluate the lawfulness and proportionality of force used by law enforcement officers against the complainant;
- extreme total length of an investigation, etc.¹¹²

As a result of the above deficiencies of investigations, the number of criminal proceedings due to torture and cruel treatment practices (both under Articles 127 and 365 (Section 2) forwarded to the court with a charging document is quite low: over the last 5 years this figure has not exceeded 3% of the total number of initiated proceedings (2013 - 1.7%; 2014 - 1.6%; 2015 - 1.90%, 2016 - 3%; 2017 - 2.7%).

In our opinion, one of the reasons of this very low efficiency of the prosecutors in investigating torture practices is a conflict of interests since a prosecutor, on the one hand, is responsible for the timely investigation of a crime the detained individual is suspected of, and, on the other hand, he/she must respond to this individual's complaints about torture. Certain prosecutors believe that this may lead to delays in an investigation of the "main crime" and, accordingly, its delayed hearing in court.

In the study "Prosecutor: manages? coordinates? controls? investigates: Report on the results of the study "Prosecutor's role at the pre-trial phase of criminal proceedings"¹¹³, we thoroughly analyzed prosecutors' responses to the cases of torture and ill-treatment, and the prosecutors' personal attitude to reports on such facts. Here are some extracts from this study:

- 81% of surveyed prosecutors say that unlawful arrests are not common practices. Percentage of violation of a right to protection is even higher - 82%, violation of a right to medical aid - 84%, torture and cruel treatment - 86%; almost one third (28%)
- of the surveyed procedural heads reject the claim that "all evidence gathered through gross violation of rights

111 ECHR Resolution in the case *Savitsky v. Ukraine*".

112 ECHR Resolutions in cases *Vitkovsky v. Ukraine*, *Belousov v. Ukraine*, *Bocharov v. Ukraine*, *Hordienko v. Ukraine*, and others.

113 "Prosecutor: manages? coordinates? controls? investigates: Report on the results of the study "Prosecutor's role at the pre-trial phase of criminal proceedings" / Belousov Yu., Venher V., Mitko V., Orlean A., Sushchenko V., Yavorska V.; general editor - Bielousov Yu. - K.: ST-Druk, 2017. - 268 p.

of the suspect must be rejected", 21% - that "respect for the suspect's rights guarantees that his/her guilt will be successfully proved in court";

- 87% of the surveyed prosecutors believe that suspects normally complain about having their rights violated to avoid being prosecuted for their offence;
- every fourth respondent believes that violation of the detainee's rights could be ignored, if it helps obtain proofs of his/her involvement in a crime.

Subjective perception by the prosecutors - procedural heads of their role in protecting the suspect's rights and freedoms during a pre-trial investigation has an impact on their further actions in specific criminal proceedings as well as efficiency of their response to reports on violation of such rights.

FIELD OFFICER:

"The 1990s and 2000s come to my mind: everyone was afraid of prosecutors and of prosecution for their acts because prosecutors used to react to violation of human rights; but today, when I talk to my colleagues, they say that they initiated one, two, or three proceedings involving officers (due to abuse of power - editor) and will close them in six months. Now the main function of prosecutors is to support public prosecution; they are no more in charge of control. And they (prosecutors) are a kind of accelerators as even if more or less good evidence is available and may help convict an individual in court, he/she (prosecutor - editor) demands more - confession to an offense. And extraction of something more is impossible, unless physical violence is used to make an individual say where a material proof is, because any other methods fail to prove it. Although a prosecutor could prove the guilt using available proofs, he is too cautious so as to avoid any acquittals"¹¹⁴.

In late 2017, according to the Transitional Conditions of the Criminal Procedure Code, the prosecutors were deprived of powers to investigate crimes involving torture and cruel treatment. These functions were passed to the State Bureau of Investigation, which is in the process of formation. At the same time, the prosecutor's offices are still in charge of procedural management in such proceedings. Therefore, a prosecutor's position has a considerable impact on efficiency of an investigation into ill-treatment practices, which will be conducted by the detectives of the State Bureau of Investigations.

3.5.3

INADEQUATE PUNISHMENT FOR TORTURE

In its Standards, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment emphasized the importance of adequate punishment of people guilty of using torture and cruel treatment as an efficient mechanism for preventing such negative practices:

"It is quite obvious that, whatever successful a case investigation is, it will have no due effect, if punishment imposed due to

¹¹⁴ Interview with a district officer.

cruel treatment is inadequate. If cruel treatment is proven, this must be followed by adequate punishment, which will have a strong persuasive effect. On the contrary, lenient punishment will contribute to an atmosphere of impunity" ¹¹⁵.

In our study, we analyzed all the judicial decisions of the national courts passed with respect to the police officers under Articles 127 and 365 (Section 2) over a period from 2012 to 2017. Figure 19 shows data by the type of punishment passed by a court for torture and other ill-treatment practices.

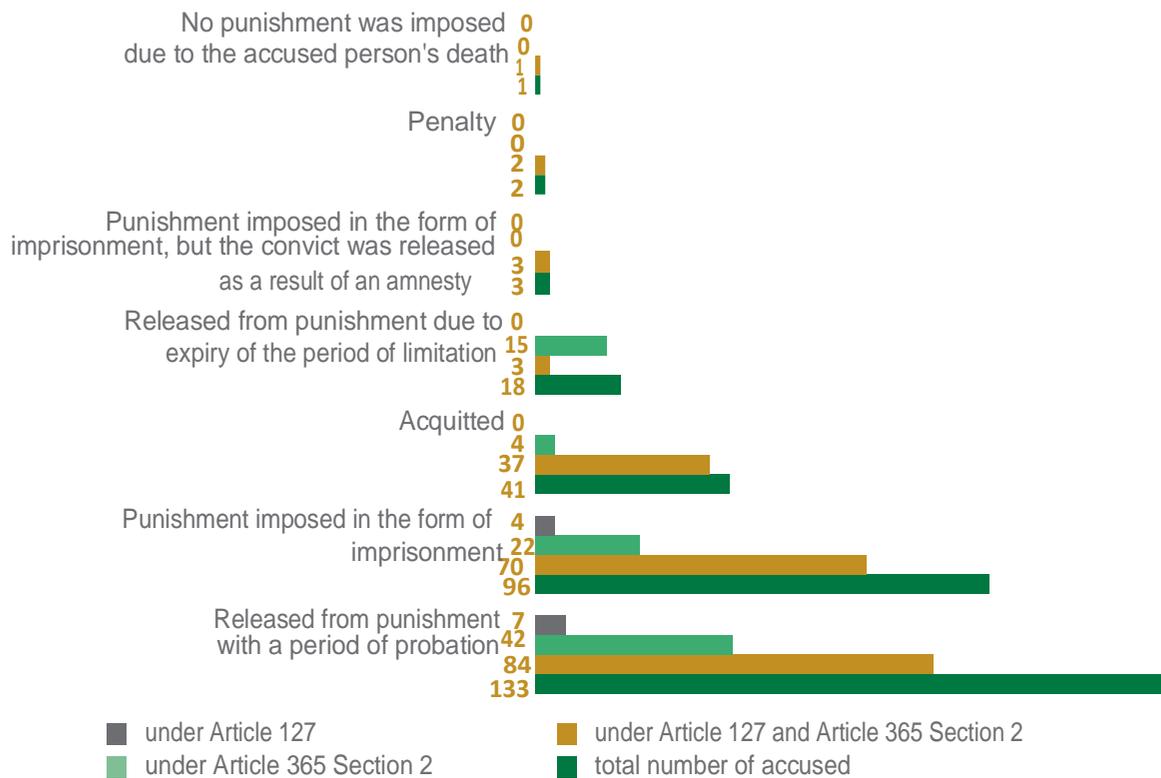


Figure 19
The accused by punishment imposed by the court

According to the above statistics, most police officers whose guilt of practicing ill-treatment was proven in court are released by courts from real punishment with probation.

It should be noted that there are cases where a court, referring to Article 75 of the Criminal Code of Ukraine, releases the accused from full punishment with probation even in case of the cruelest forms of ill-treatment - torture. Here are some extracts from court decisions to prove the use of such practices.

EXTRACT FROM A COURT DECISION:

"While staying in office No. 209, on September 21, 2011 over a period from about 10:00 to 17:55, the chief of the crime investigation sector against the officer of the criminal investigation department of the Sviatoshyno District Police Office

¹¹⁵ Clause 41 of the Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf/E (2002) 1 - Rev.2015.

PERSON_1 and persons, the case of whom was severed from other charges, acting with a direct intention in collusion with a group of people, abusing their powers, aiming at obtaining information about a murder, in contravention of the requirements of Articles 3, 28 of the Constitution of Ukraine, Articles 1, 5, 12 of the Law of Ukraine "On the Police", used physical violence against PERSON_2 by dealing multiple blows with their hands and feet to the various parts of the body. Following their common criminal intention, the said police officers also hung PERSON_2 up on a stick with his arms wrung behind his back, which caused a strong physical pain to the latter, and, while the latter was in this position, they continued to deal multiple blows with their hands and feet to various parts of the body.

Failing to obtain information about the murder, PERSON_1 and persons, the case of whom was severed from other charges, put PERSON_2 on a desk in that office and pressed a heated iron onto the latter's bare back several times.

Next day ... following an oral instruction of the chief of the crime investigation sector and PERSON_1, officer of the criminal investigation department of the Sviatoshyno District Police Office of the Main Department of the Ministry of Internal Affairs of Ukraine in the city of Kyiv, PERSON_2 was taken to office No. 209 located in the same premises ... In this office, on September 22, 2011, over a period from about 12:00 to 14:00, the chief of the crime investigation sector and PERSON_1, officer of the criminal investigation department of the Sviatoshyno District Police Office, the case of whom was severed from other charges, ... in order to obtain information about the murder, continued to use physical violence against PERSON_2 by dealing multiple blows with their hands and feet to various parts of the body.

According to forensic medical report No. 418/i dated October 20, 2011, PERSON_2 was caused bodily harm such as scratches on the front surface of the right knee joint, on the front internal surface of the knee joint, on the front external surface of the left thigh in the middle third, bruises on the front surface of the left thigh against the background of which a scratch can be seen, in the left temple area, sub-dermal hematomas of the two ear auricles, 1-2 degree skin burns on the back surface of the thorax in the right infrascapula region stretching to the right lumbar region, in the right lumbar region.

Analyzing all the gathered materials, the court believes that the guilt of accused PERSON_1 is fully proven and qualification of his actions under Article 365 Section 2, Article 127 Section 2, Article 358 Section 4 of the Criminal Code of Ukraine is correct because he abused power, i.e. intentional actions by a public officer clearly going beyond his rights and powers stepped up with violence; in collusion with a group of individuals, he used torture, i.e. deliberately caused a strong physical pain by dealing blows and performing other violent actions so as to force the victim into acting against his will, including obtaining information from him, and used a knowingly false document.

...

Taking into account the above facts, the court arrives at a conclusion that accused PERSON_1 should be sentenced to imprisonment. At the same time, the court, taking into consideration the factual circumstances in the case, the personality of the accused now fired from the law enforcement agencies of the Ministry of Internal Affairs of Ukraine, the fact that the accused has no previous criminal records, has a permanent place of residence, has two minor dependents born in 2004 and 2013, has a wife having a parental leave, has an elderly 2nd category disabled father, is young, and also the fact that the victim received full indemnification of damage and asks the court not to imprison the accused, finds that he can be subject to correction and rehabilitation without being isolated from society, having sentenced him without imprisonment under Article 75 of the Criminal Code of Ukraine.

RULED AS FOLLOWS:

PERSON_1 is convicted of committing criminal offenses stipulated by Article 365 Section 2, Article 127 Section 2, Article 358 Section 4 of the Criminal Code of Ukraine and is sentenced:

- under Article 365 Section 2 of the Criminal Code of Ukraine to four (4) years of imprisonment and deprivation of a right to hold positions associated with special powers of authority at law enforcement agencies over three (3) years and deprivation of the special rank of senior police lieutenant under Article 54 of the Criminal Code of Ukraine.
- under Article 127 Section 2 of the Criminal Code of Ukraine to five (5) years of imprisonment;
- under Article 358 Section 4 of the Criminal Code of Ukraine to one (1) year of restriction of liberty.

Under Article 70 of the Criminal Code of Ukraine, by merging less severe punishment with more severe one, accused PERSON_1 is finally sentenced to five (5) years of imprisonment and deprivation of a right to hold positions associated with special powers of authority at law enforcement agencies over three (3) years and deprivation of the special rank of senior police lieutenant under Article 54 of the Criminal Code of Ukraine.

Under Article 75 of the Criminal Code of Ukraine, PERSON_1 is released from primary punishment with probation by imposing a probation period of three (3) years" ¹¹⁶.

EXTRACT FROM A COURT DECISION:

"On January 28, 2010, PERSON_10, using his connections with the officers of the Rozdilna District Police Office of the Main Department of the Ministry of Internal Affairs of Ukraine in Odesa Oblast, asked PERSON_6 to help him identify individuals involved in the theft of parts of the excavator used in the Novodmytrivka quarry in the Rozdilna District of Odesa Oblast, worth in total about UAH 7,000, assuming that PERSON_11 and PERSON_9 hired by him might be involved in the theft

Upon bringing PERSON_11 and PERSON_9 to the Rozdilna District Police Office of the Main Department of the Ministry of Internal Affairs of Ukraine in Odesa Oblast, the latter were on the third floor of the building in the offices belonging to the crime investigation sector, where PERSON_4, PERSON_5, PERSON_6, PERSON_7, and PERSON_9 demanded one by one that PERSON_11 and PERSON_9 confess to the theft and return to PERSON_10 the excavator parts, threatening that otherwise they would use measures of physical coercion.

Having failed to obtain a confession from PERSON_11 and PERSON_9, in order to obtain such confession PERSON_4, PERSON_5, PERSON_6, PERSON_7, PERSON_8 started to deliberately use unauthorized investigation methods ... For this purpose, over a period from about 17:30 to 19:00, PERSON_5, PERSON_6, PERSON_7, and PERSON_8, staying in offices No. 17 and No. 18, acting jointly in collusion, following instructions of PERSON_4 to use unauthorized investigation methods, under his control, intending to coerce him to a confession, used physical violence against PERSON_11 and PERSON_9 by dealing multiple blows with their hands, feet, and a rubber truncheon to the head, body, and limbs, causing a severe physical pain, physical and moral sufferings as a result of such beatings.

....

Having failed to extract a confession to the theft from PERSON_11 and PERSON_9, PERSON_4, PERSON_5, PERSON_6, PERSON_7, PERSON_8 and the individual not identified by the investigators, by their presence, demonstration of their impunity and permissiveness, encouraging each other to use more painful methods of extracting a confession, started to use more painful torture using a device generating

116 Sentence by Sviatoslyn District Court in Kyiv dated July 16, 2014, No. 759/7180/14-k, case No. 1-kp/759/314/14.

electricity. For this purpose, the aforementioned individuals handcuffed the hands of PERSON_9 and PERSON_11 stretched aside, the free ends of handcuffs were attached to nearby stools, which prevented them from getting away from the stool they were sitting on, with wires conducting electricity being attached to their thumbs.

Torturing PERSON_11 and PERSON_9 with electricity and causing severe and moral sufferings to them, PERSON_4, PERSON_5, PERSON_6, PERSON_7, PERSON-8, and an individual not identified by the investigators, stepping up sufferings caused by torture, also attached wires to the victims' ears and put a plastic bag on the head of PERSON_11 blocking his respiration; they tortured PERSON_9 by attaching wires to his genitals, did not let him go to the WC making him defecate in the office during torture. While torturing with electricity, PERSON_4, PERSON_5, PERSON_6, PERSON_7, and PERSON-8 were dealing regular blows with their hands and feet to various parts of the body of PERSON_11 and PERSON_9 and threatened that there might be bad consequences for their life and health.

PERSON_11 was caused multiple scratches and bruises of the face, body, upper and lower limbs (bruises of the frontal region of the head, left eye, left and right scapula region of the back, right shoulder, right infraclavicular region, left and right thighs, scratches of the back surface of the right and left wrists, lineate and V-type scratches of the right and left wrist joints), point scratches of the back surface of thumbs of the right and left hands, brain concussion, injuries of the thoracic and lumbar spine).

PERSON_9 was caused multiple scratches and bruises of the upper and lower limbs, injuries of the soft tissues of the head (bruises of the right shoulder, right thigh and right knee joint, scratch of the right tibia, lineate scratches of the right wrist joint), point scratch of the back surface of the thumb of the right hand.

...

The court qualifies actions of PERSON_4, PERSON_5, PERSON_6, PERSON_7, PERSON_8 under Article 127 Section 2 of the Criminal Code of Ukraine as torture, i.e. intentional infliction of a severe physical pain, physical and moral sufferings by dealing blows, causing sufferings and other violent actions so as to coerce the victim to carry out actions against his will, including obtaining a confession of actions he is suspected of, in collusion with a group of people; under Article 365 Section 2 of the Criminal Code of Ukraine / revised on June 11, 2009 /as abuse of power, i.e. intentional actions by a public officer clearly going beyond his rights and powers, if they caused material harm to the rights and interests of individual citizens and the public interests protected by law, stepped up with violence, painful and degrading for the victim.

Under Article 54 of the Criminal Code of Ukraine, the court finds it necessary to deprive PERSON_4, PERSON_5, PERSON_6, PERSON_7, and PERSON_8 of their special ranks to have a moral impact on them, and deprive them of privileges associated with those ranks because they committed a serious crime of professional misconduct discrediting a police officer rank, which is incompatible with the further use of a special rank.

...

PERSON_8 is to be convicted of crimes stipulated by Article 127 Section 2, Article 365 Section 2 of the Criminal Code of Ukraine and sentenced:

- under Article 127 Section 2 of the Criminal Code of Ukraine to five (5) years of imprisonment;

- under Article 365 Section 2 of the Criminal Code of Ukraine to four (4) years of imprisonment with deprivation of a right to hold positions at law enforcement agencies over three (3) years.

Under Article 54 of the Criminal Code of Ukraine, PERSON_4 is to be deprived of the special rank of police captain.

Under Article 70 of the Criminal Code of Ukraine, by merging less severe punishment with more severe one, PERSON_4 is sentenced to five (5) years of imprisonment and deprivation of a right to hold positions at law enforcement agencies over three (3) years and deprivation of the special rank of police captain.

Apply Article 75 of the Criminal Code of Ukraine and release PERSON_4 from the passed sentence to imprisonment by setting a probation period of three (3) years.

...

PERSON_5 is to be convicted of crimes stipulated by Article 127 Section 2, Article 365 Section 2 of the Criminal Code of Ukraine and sentenced:

- under Article 127 Section 2 of the Criminal Code of Ukraine to five (5) years of imprisonment;
- under Article 365 Section 2 of the Criminal Code of Ukraine to four (4) years of imprisonment with deprivation of a right to hold positions at law enforcement agencies over three (3) years.

Under Article 54 of the Criminal Code of Ukraine, PERSON_5 is to be deprived of the special rank of police senior lieutenant.

Under Article 70 of the Criminal Code of Ukraine, by merging less severe punishment with more severe one, PERSON_5 is sentenced to five (5) years of imprisonment and deprivation of a right to hold positions at law enforcement agencies over three (3) years and deprivation of the special rank of police senior lieutenant.

Apply Article 75 of the Criminal Code of Ukraine and release PERSON_5 from the passed sentence to imprisonment by setting a probation period of three (3) years.

...

PERSON_6 is to be convicted of crimes stipulated by Article 127 Section 2, Article 365 Section 2 of the Criminal Code of Ukraine and sentenced:

- under Article 127 Section 2 of the Criminal Code of Ukraine to five (5) years of imprisonment;
- under Article 365 Section 2 of the Criminal Code of Ukraine to four (4) years of imprisonment with deprivation of a right to hold positions at law enforcement agencies over three (3) years.

Under Article 54 of the Criminal Code of Ukraine, PERSON_6 is to be deprived of the special rank of police captain.

Under Article 70 of the Criminal Code of Ukraine, by merging less severe punishment with more severe one, PERSON_6 is sentenced to five (5) years of imprisonment and deprivation of a right to hold positions at law enforcement agencies over three (3) years and deprivation of the special rank of police captain.

Apply Article 75 of the Criminal Code of Ukraine and release PERSON_6 from the passed sentence to imprisonment by setting a probation period of three (3) years.

...

PERSON_7 is to be convicted of crimes stipulated by Article 127 Section 2, Article 365 Section 2 of the Criminal Code of Ukraine and sentenced:

- under Article 127 Section 2 of the Criminal Code of Ukraine to five (5) years of imprisonment;
- under Article 365 Section 2 of the Criminal Code of Ukraine to four (4) years of imprisonment with deprivation of a right to hold positions at law enforcement agencies over three (3) years.

Under Article 54 of the Criminal Code of Ukraine, PERSON_7 is to be deprived of the special rank of police lieutenant. Under Article 70 of the Criminal Code of Ukraine, by

merging less severe punishment with more severe one, PERSON_7 is sentenced to five (5) years of imprisonment and deprivation of a right to hold positions at law enforcement agencies over three (3) years and deprivation of the special rank of police lieutenant.

Apply Article 75 of the Criminal Code of Ukraine and release PERSON_7 from the passed sentence to imprisonment by setting a probation period of three (3) years.

...

PERSON_8 is to be convicted of crimes stipulated by Article 127 Section 2, Article 365 Section 2 of the Criminal Code of Ukraine and sentenced:

- under Article 127 Section 2 of the Criminal Code of Ukraine to five (5) years of imprisonment;
- under Article 365 Section 2 of the Criminal Code of Ukraine to four (4) years of imprisonment with deprivation of a right to hold positions at law enforcement agencies over three (3) years.

Under Article 54 of the Criminal Code of Ukraine, PERSON_8 is to be deprived of the special rank of police lieutenant.

Under Article 70 of the Criminal Code of Ukraine, by merging less severe punishment with more severe one, PERSON_8 is sentenced to five (5) years of imprisonment and deprivation of a right to hold positions at law enforcement agencies over three (3) years and deprivation of the special rank of police lieutenant.

Apply Article 75 of the Criminal Code of Ukraine and release PERSON_8 from the passed sentence to imprisonment by setting a probation period of three (3) years"¹¹⁷.

Analyzing the time of real imprisonment of law enforcement officers due to ill-treatment, it may be concluded that, in general, courts sentence to more serious punishment for torture stepped up with abuse of official powers than for abuse of official powers stepped up with violence without torture (Figure 20).

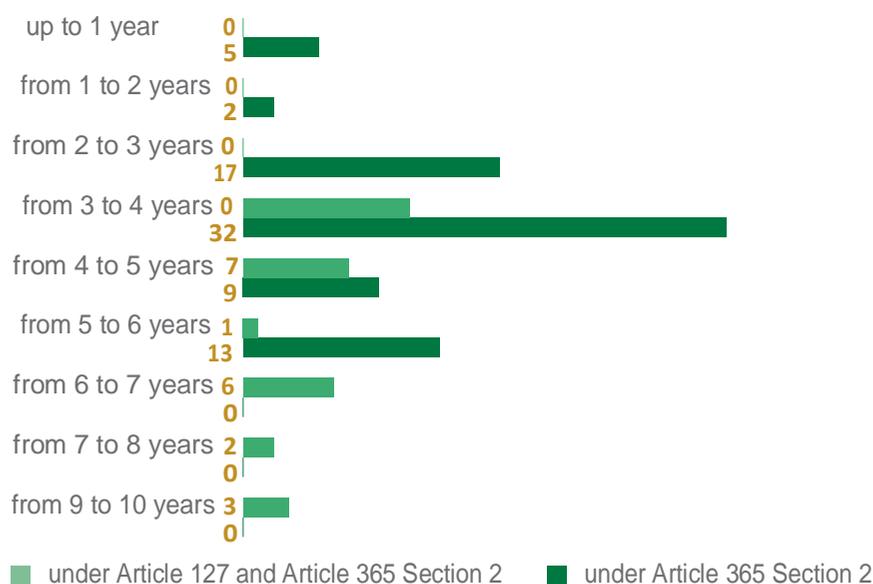


Figure 20
Information about the number of persons sentenced to real imprisonment (court sentences under Articles 127 and 365 (Section 2) from 2012 to 2017)

Thus, for instance, the average weighted time of imprisonment for abuse of power and official powers without torture ranges from 3 to 4 years, but for torture

¹¹⁷ Sentence by Malynovsky District Court in Odesa dated December 18, 2015, case No. 521/16320/13-k, 1-kp/521/6/15.

stepped up with abuse of powers and official powers, the average weighted time of imprisonment ranges from 5 to 6 years.

At the same time, as the above statistics show, 3 to 4 years is the common time of imprisonment of law enforcement officers for all types of ill-treatment practices, including torture.

In this context, it should be noted that such punishment is not adequate for the seriousness of crime committed by law enforcement officers. Deficiencies of the applicable criminal legislation as regards determination of the scale of sanctions for ill-treatment crimes contribute to such practices as well.

Thus, for instance, the sanction of Article 127 Section 1 of the Criminal Code of Ukraine stipulates punishment for torture such as imprisonment from two to five years, actually referring torture to crimes of medium gravity. Torture is considered to be a grave crime only if it is used repeatedly or in collusion with a group of people, or due to racial, national, or religious discrimination. In this case, the sanction of Article 127 Section 2 stipulates imprisonment from five to ten years.

Article 365 Section 2 of the Criminal Code of Ukraine (abuse of power or official powers stepped up with violence without torture) stipulates punishment such as imprisonment from three to eight years. However, as we mentioned above, the court normally sentences law enforcement officers for such acts to the minimum time of imprisonment stipulated by the sanction under this article - from three to four years, which means that ill-treatment is actually qualified as a crime of medium gravity.

Going back to the statistics presented in Figure 21, we can see that some officers are released from their punishment due to expiry of the period for criminal prosecution, which, in turn, points out to the extreme length of both a pre-trial investigation and court hearing of this category of crimes.

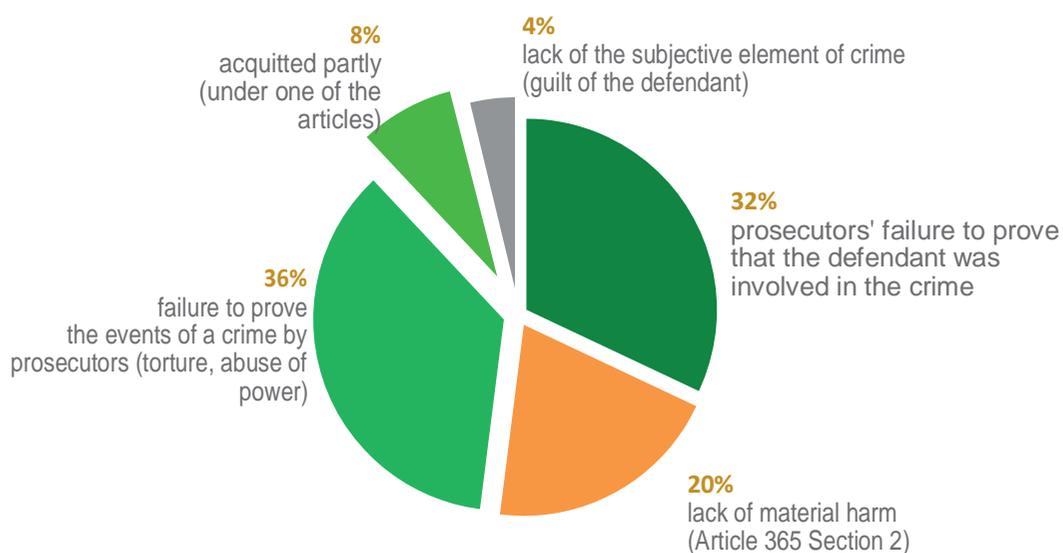


Figure 21
Grounds for acquittal
(both under Articles 127 and 365 (Section 2))

There are cases where a court finds no grounds for punishing law enforcement officers and acquits them. The common reason for acquittals is the prosecutors' failure to prove the event of the crime. Normally, in this case a court recognizes that law enforcement officers used force lawfully and that the prosecutors' proofs of power abuse are groundless.

The prosecutors' failure to prove the defendant's involvement in the crime ranks second: the court believes that the prosecutors fail to provide enough evidence that would convincingly prove that this individual practiced ill-treatment.

The prosecutors' failure to prove material harm of the crime is a common reason for acquittals. In such cases, the court does not actually deny ill-treatment or the defendant's involvement in it. This problem is described with more details in Section 3.5.1.

3.6

LOW PROFESSIONAL LEVEL OF CERTAIN POLICE OFFICERS

The interviewed experts estimate that one of the causes of ill-treatment of citizens by the police officers is low qualification of law enforcement officers.

Thus, in particular, inadequate qualification of certain investigators and criminal police officers is the cause of their inability to use methods of investigation and crime solution stipulated by law. This category of law enforcement officers uses violence as the simplest, in their opinion, method of investigation.

LAWYER:

"I believe that the problem consists in the basic education of a police officer. Perhaps, this is just my experience. I dealt with the police officers for the first time in 1996. They were police officers from the Directorate for Combating Organized Crime, district officers with Soviet-era education. It is pointless to say what laws we had back then. But the police officers had better education" ¹¹⁸.

JUDGE:

"The current technical capacities and achievements permit to find out facts and have moral satisfaction with such findings, prove that the suspect was involved in the crime, and not just shake him like a pear tree - this is not an investigation. They are not enthusiastic and tell you that they have no time and their life is difficult; but I just wonder why they have this job. Surprisingly, they feel a certain nostalgia for the methods used to investigate cases in the past (1970s-1980s). No one can interrogate, gather information, or is enthusiastic about their job" ¹¹⁹.

¹¹⁸ Focus group with lawyers.

¹¹⁹ Interview with a judge.

LAWYERS:

"It (confession - editor) was not used very much in the Soviet era. Even without using molecular tests, investigators were able to prove the suspect's guilt without a confession. In other ways. But over the last 10 to 12 years, proofs and crime solution have relied solely on confessions ... Basic education has probably an impact as well ... I can't say about all the high schools, but police high schools are horrific";

"I worked as an investigator for seven years and then as a lawyer for seven years. And I can say the following. Yes, I agree that district officers that worked in the Soviet era solved crimes and needed no torture. But a younger generation came. Back then, we had three police stations in the region. And torture was practiced only in one of them. And people are still tortured to extract confessions. And this is practiced from one generation to another";

"Performance of crime scene investigation teams is poor. A crime scene investigation team goes to the site of a crime, but fails to gather enough evidence to serve an individual with charges. There is evidence, but no one is willing to gather it. When I went to the sites from 2002 to 2009, and if we could not dedicate three pages to the description of the event scene, our chief of the investigation department used to order us to go back and remake the materials and make an extra protocol". Otherwise, we were unable to register it. Failure to identify fingerprints on the site was unimaginable! A lot of people live there, so are they all incapable? Impossible. Step by step, we were made to do something. Current protocols include no more than five sentences. Well, this is not a proper inspection of the scene" ¹²⁰.

JUDGE:

"Every time at my lectures, I tell them (policemen - editor) that they should not be happy when they finally get a confession, because this confession will be a source of future problems, and you stop using your ability to investigate the case, nobody wants to use their brains, be interested in finding evidence and solving a crime" ¹²¹.

As we can see, experts mention the Soviet-era system of training police officers, estimating that its quality was much better. In our opinion, we can agree with this estimate as regards methods of crime investigation and solution. It is a fact that in the mid-1990s most highly professional officers left the agencies of the Ministry of Internal Affairs and this had a negative impact on the institutional memory in the law enforcement system. Creation of a large number of relevant educational institutions led to personnel rejuvenation. Because of a lack of a duly organized experience sharing process, ill-treatment practices have become commonplace as a "simple and efficient" method of solving crimes.

Field officers and investigators pointed out to a low professional level of their colleagues as a cause of ill-treatment practices.

FIELD OFFICER:

"Poor professionalism is the cause as a number of procedures are needed to solve a crime and find proofs. But it is simpler to conduct various procedures with respect to the suspect by violating his/her rights, using torture, violence, and when he/she confesses to have committed the crime - proofs are easier to be found.

¹²⁰ Focus group with lawyers.

¹²¹ Interview with a judge.

If, for example, an individual committed a theft, a district officer received information that the theft was committed by this individual, it is easier for the officer to take the suspect away, detain him/her for a while, particularly if the suspect is a drug addict, if he/she is detained for a day, he/she is ready to confess everything, i.e. he/she wants to go through the procedure so as to restore his/her health condition, he/she is ready to tell you anything, even if he/she might not have done it. But then the suspect tells you where and from whom he took all these items, the circumstances, how he/she penetrates inside and steals things, and, what is most important, the whereabouts of material evidence that he disposed of. In other words, the suspect confessed everything and a crime is being solved by following the traces of it: material evidence is confiscated, shoes are confiscated if shoe-prints are identified, and this is the easiest and the shortest path to prove that the suspect is guilty of a crime" ¹²².

INVESTIGATOR:

"There are many young unskilled officers. How could they have been trained for 2 to 3 months, if investigators are trained for four years? They come and they have several months for training, they can't even correctly draft procedural documents. Time is necessary to train them to do correctly all the procedures so that they could respect rights, comply with laws, and conduct investigations correctly from the procedural perspective. Experienced officers take time to do it" ¹²³.

Special attention should be paid to an improper level of professional training of the new patrol police officers. Thus, in particular, prosecutors pointed out that the patrol police officers poorly know the requirements of the applicable laws as regards legal grounds for using force and special means.

PROSECUTOR:

"The fact that the new patrol police officers do not know the laws leads to the unlawful use of force: wringing arms, pushing down to the ground, excessive use of fixation devices (handcuffs)" ¹²⁴.

In addition, the patrol police officers estimate that there is currently a problem with training of patrol policemen as the training system is focused on foreign experience, and not the situation in Ukraine. American practices, which are in conflict with the requirements of the applicable laws in Ukraine, are used in the patrol police training program. I.e., the algorithm of patrol policemen training involves a larger range of powers exercised by policemen, which are not stipulated by the Law of Ukraine "On the National Police".

PATROL POLICE OFFICERS:

"We were trained according to the American practices and a certain algorithm". And this algorithm implied that the laws would somewhat change in Ukraine, a driver would not move, the key would be put on the hood, etc.";

"There is an algorithm to be followed, but when a policeman is in the street, he discovers that it does not work";

"We have no other algorithm. It turns out that a policeman must act at his discretion. He must either leave without interfering, or proceed to completion understanding that he is violating the laws" ¹²⁵.

¹²² Interview with a district officer, 123

Focus group with investigators.

¹²⁴ Focus group with prosecutors.

¹²⁵ Focus group with patrol police officers.

3.7 IMPROPER LEVEL OF PSYCHOLOGICAL SUPPORT OF POLICE OFFICERS

Analyzing the judicial decisions, talking to the victims of ill-treatment by the police officers, we saw that it is often difficult to identify the cause of using force as beatings are not associated with the extraction of a confession of a crime or obtaining any other information important for solving a crime, or for any selfish reasons.

In our opinion, certain percentage of such cases can be explained by a troubled mental and emotional condition of a policeman when violence is used either due to the psychological inclination to such behavior or as a diversity of a "psychological relief" as a result of accumulation of personal or job-related problems.

In such situations, a policemen continues using physical force and moral pressure with respect to the arrested person, who offers no resistance and is under full control of the law enforcement officer.

VICTIM OF TORTURE:

"They asked me to get into the car (everything was filmed) and I told them that I was offering no resistance at all, but inspector B. approached, hit me with his hand in the groin and started the search. In my jacket pocket, he found a license to carry weapons, but I immediately warned him that I had no weapons with me, just this license, but he never gave it back to me. As a result, I was handcuffed and pushed into the car; one patrol officer took the wheel, while the other one got next to me and began pummeling me on the head with his elbows (about ten blows were dealt to my neck, cheek). I think it is mere despotism. He wanted to show his importance and, as I offered no resistance, he proved himself by using physical force" ¹²⁶.

During the focus group meeting, the police patrol officers pointed out that former police officers accustomed to using violent methods are most inclined to aggressive behavior.

PATROL POLICE OFFICERS:

"Most patrol police officers are aggressive and they like causing harm. They include mostly former police officers";

"There were two "former" officers in my company and they always abused power";

"Officers that mostly violated laws and abused power were primarily former police officers";

"There is a guy, a former local police officer. And he is used to dealing with people in this way. You can't persuade him that he must not do so. We worked as mates many times and had problems because he went beyond the limits of necessary defense.

¹²⁴ Interview with a victim of torture.

He often used force in cases where it was not necessary. He always provoked a conflict. My current mate happened to be involved in a bad situation and I was about to be reprimanded because of him" ¹²⁷.

Unlawful violence is also used by the "new" patrol police due to huge mental and emotional stresses leading to professional deformation and burnout. In this situation, the police officers are under stress and sometimes relieve their feelings through abuse of power.

PATROL POLICE OFFICERS:

"I think this is associated with several factors. Firstly, people coming from the streets to the police become deformed; the profession deformed them";

"In my opinion, a policeman can often abuse his powers, particularly when someone takes things personally and associates all the policemen with this police officer and simply spatters with dirty words. Not every policeman has a resistant mentality to bear this blow and not to lose his temper".

"Besides, there are threats. We were documenting a traffic accident with the victims, and the car driver that had run over a person on the sidewalk was very drunk. When we arrested and handcuffed him, my mate and I, we put him up; then a crime scene investigation team arrived to document the accident and we had to make sure that he could not flee away or that nothing could happen to him. Then his friends turned up: they supported him and began to insult us. I was near the scene. He spat at me. Then he said: "I will not forget you. And I have connections in the police and they will solve all the problems. I will find you and I will bury you". Threats just like this, I filmed his threats to me. And I was in that situation. And then I was approached by a woman, who asked me: "Why are you doing nothing?" I answered: "What else can we do to him? He is handcuffed". And we can do nothing about what he is talking or the fact that he is spitting at me" ¹²⁸.

Sometimes the use of force can be viewed as certain psychological relief due to personal or family problems.

PATROL POLICE OFFICER:

"I had a patrol officer going through a divorce process. He had two children and his wife did not allow to see them. Can you imagine his mood when working in his shift? Or a female patrol officer being divorced as well. Can you imagine her mood at work? Keep in mind that she receives firearms."

According to the patrol police officers, their colleagues that fought in the anti-terrorist operation zone are inclined to use force. Due to unavailable adequate psychological support and rehabilitation after the war, some officers are prone to violence when on duty.

PATROL POLICE OFFICER:

"I had a patrol officer who had fought in the ATO. And he used excessive force in any situation where it could be avoided. But this is a psychological condition. And I had no influence on the fact that he had proneness to it after fighting in the ATO" ¹²⁹.

126 Focus group with patrol police officers. 128
Focus group with patrol police officers. 129
Focus group with patrol police officers.

A well developed system of psychological support of the police officers was supposed to be an efficient method of solving the above problems; it would make it possible to get rid of negative emotions in an acceptable way, and also to timely react to the early signs of mental deviations of law enforcement officers. However, according to the patrol police officers, the current psychological service fails to fulfill its duties in full scope.

PATROL POLICE OFFICERS:

"As a company commander, I requested the assistance of psychologists to test the psychological condition of my officers. Because I had guys who grabbed weapons or behaved inadequately in certain situations, and could even use obscenities. There was no result. Psychologists arrived, drew some circles and triangles, and that's all";

"You can see a psychologist, but there are no cases where a visit would be paid to a psychologist at least every three months. I think that if you work in this type of service, you should go through psychological tests so as to make it clear how seriously you need help, rehabilitation, recovery";

"No one deals with us" ¹³⁰.

As there is no efficient system of psychological support of law enforcement officers, they have to seek support from each other or reveal positive aspects of their job.

PATROL POLICE OFFICERS:

"Universal ways of relaxation and mutual support of each other";

"Ability of mates to support each other";

"You can go to the site where you can be a target of such obscenities that you want nothing afterwards. But an hour later you respond to a call and save a life. My mate and I, we saved an elderly man from death. My mate and I, we also saved an elderly woman, etc. All these positive aspects are encouraging" ¹³¹.

Furthermore, the patrol police officers said that they would trust the psychological service even more and performance of psychologists would be better, if these specialists were not on the payroll of the patrol service, but would be independent on the police.

PATROL POLICE OFFICERS:

"When I approached the chief and told him that after the murder case in our area, which was tough experience for me as I saw very horrific things, I needed psychological support, so I told the chief:

"I want to see a psychologist, who is our psychologist now?" He asked me: "Do you want problems after that, in the future?". I said: "Alright", and I paid for the psychologist's services myself";

"In general, it would be great to deal with a psychological organization instead of staff psychologists. It is a technical matter whether there should or should not be a tender. An organization that would work anonymously and sign a contract with the patrol police so that we could know that they help us, but that they are not related and do not disclose information, unless there are special cases" ¹³².

¹³⁰ Focus group with patrol police officers.

¹³¹ Focus group with patrol police officers. ¹³²

Focus group with patrol police officers.

GENERAL CONCLUSIONS

1. TORTURE AND CRUEL TREATMENT IN THE ACTIVITIES OF THE NATIONAL POLICE OF UKRAINE IS STILL A SYSTEMIC ISSUE.

According to the statistics of health care institutions alone, the number of people that requested medical aid due to bodily harm inflicted by law enforcement officers amounted to 2,386 people in 2017. At the same time, the number of such requests has been steadily growing for the last few years (1,217 cases in 2015; 1,666 cases in 2016).

Moreover, an analysis of these statistics gives grounds to state that bodily harm was inflicted by law enforcement officers by endangering the life and health of citizens - the region of the head (30.12% of all the types of injuries) represents the highest share of injuries just as injuries of several regions of the body (injuries of the head and body, injuries of the head and limbs, injuries of the head, body, and limbs, injuries of the body and limbs), the so called "combined injuries" - 24.58%.

2. COMMON CAUSES OF TORTURE AND OTHER FORMS OF ILL-TREATMENT INCLUDE:

- obtaining certain information from the arrested individual: confession of a crime, information or a confession of a third person, information about individuals (accomplices) involved in the crime, etc.;
- punishment of a person for certain actions or for actions of third parties he/she is suspected of. This category includes quite a wide range of cases: from beating a person for committing an offense to using violence due to unfriendly relations suddenly arising during a conversation between a police officer and a victim of ill-treatment.
- violence aimed at obtaining unlawful benefits from the arrested individual. Normally, this includes extortion of money from the suspects in exchange for not prosecuting them.

One of the key causes of ill-treatment is impunity of law enforcement officers for such practices because, as we know, impunity for a crime encourages new crimes. Causes of impunity, in turn, include:

- Deficiencies of the applicable criminal legislation of Ukraine as regards qualification of torture and cruel treatment and determination of the scale of sanctions for ill-treatment crimes. At present, the applicable version of Article 127 of the Criminal Code

of Ukraine includes no reference to the special subject of this crime, which does not correspond to the definition of the term "torture" provided in Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Besides, the sanction of Article 127 Section 1 of the Criminal Code of Ukraine stipulates punishment for torture such as imprisonment from two to five years, actually referring torture to crimes of medium gravity;

- lack of an efficient mechanism of investigation of torture and cruel treatment by law enforcement agencies in Ukraine. As a result of the above deficiencies of investigations by the prosecutors pointed out to by the European Court of Human Rights in its resolutions on multiple occasions, the number of criminal proceedings due to torture and cruel treatment practices (both under Articles 127 and 365 (Section 2) forwarded to the court is quite low: over the last 5 years this figure has not exceeded 3% of the total number of initiated proceedings (2013 - 1.7%; 2014 - 1.6%; 2015 - 1.90%, 2016 - 3%; 2017 – 2.7 %);
- inadequate punishment for such crimes imposed by the resolutions of the national courts. Thus, in particular, there are cases where a court, referring to Article 75 of the Criminal Code of Ukraine, releases the accused from full punishment with probation even in case of the cruelest forms of ill-treatment - torture.

The so called score system of evaluation of performance of the police officers has a considerable impact on the use of practices of forcing a suspect into confessing to involvement in a crime. It consists in using quantitative parameters for evaluating performance of the field and investigative police units, which are regularly compared to the similar periods of the previous year (quarter, month). Just as before, field units are still evaluated according to the number of solved crimes and investigative units are assessed according to the number of cases taken to court.

The main drawback of evaluating the police officers solely according to quantitative parameters consists in shifts of emphases of their work from real fight against crimes to the achievement of parameters. In turn, due to this situation, it may not be important for an officer whether the arrested individual committed a crime - his/her confession to a crime is more important. Moreover, cases when the police officers force an individual into confessing to several unsolved crimes to improve their performance score are still frequent.

The interviewed experts estimate that one of the causes of ill-treatment of citizens by the police officers is low qualification of law enforcement officers. Thus, in particular, inadequate qualification of certain investigators and criminal police officers is the cause of their inability to use methods of investigation and crime solution stipulated by law. Inadequate training of the patrol police officers often results in the excessive use of force during the arrest.

Violence used by the police may be also caused by huge mental and emotional stresses leading to professional deformation and burnout. Stepped up with personal or family problems, this can lead to violent actions as a way of psychological "relief".

A well developed independent system of psychological support of the police officers should be an efficient method of solving the above problems; it would make it possible to get rid of negative emotions in an acceptable way, and also to timely react to the early signs of mental deviations of law enforcement officers. However, the police officers estimate that the current system of psychological support is very inefficient.

3. ILL-TREATMENT IS ALSO USED DURING THE SUSPECT'S ARREST AND CONSISTS IN GROUNDLESS OR DISPROPORTIONAL USE OF FORCE AND SPECIAL MEASURES.

The police officers in fact refer to only two of four principles of using force mentioned in Article 29 of the Law "On the National Police", namely to lawfulness and efficiency. Believing that law gives them a right to use physical force during an arrest enabling to efficiently, in their opinion, exercise the police powers, the law enforcement officers often forget about the two other principles - necessity and proportionality of the use of force. However, non-compliance with these principles challenges the lawfulness of the arrest in general, and in some cases, given the seriousness of the consequences for the arrested person, it may include constituent elements of a number of crimes stipulated by the applicable Criminal Code of Ukraine.

4. AN ANALYSIS OF COURT DECISIONS REVEALED SEVERAL CASES OF ARREST WITHOUT ANY LEGAL GROUNDS, IN PARTICULAR:

- transporting an individual to the police station for participating in investigative procedures upon the investigator's order. This practice is common: investigators order field units to bring a person for participation in investigative procedures referring to the requirement of Article 40 of the Criminal Procedure Code of Ukraine. But this requirement of the investigator is clearly unlawful as Article 40 Section 2 Clause 3 of the Criminal Procedure Code of Ukraine authorizes the investigator to order the relevant field units to conduct investigative (search) procedures and covert surveillance (search). An arrest is not an investigative or search procedure;
- bringing a person to the police station following an order of the local police inspector. It should be noted that a person's arrest under an order of a local police inspector, just as in the case above, is a gross violation of the applicable laws. It can be stated that this time officers of the law enforcement agencies disguise the actual arrest and use the term "forced appearance", which is not legal either, as the applicable laws stipulate clear requirements for both an administrative arrest and an arrest on suspicion of committing a crime.

5. ILL-TREATMENT IS MOST OFTEN USED BY FIELD OFFICERS, LOCAL POLICE INSPECTORS, AND PATROL POLICE OFFICERS.

Most often officers of these police services actually arrest individuals suspected of committing offenses and take them to the police stations. Besides, it is district officers and local police inspectors who are the first to actually re-enact the circumstances of a committed offense and get in first contact with the arrested individual.

Special concerns are raised by involvement of senior police officers in torture as the cruelest type of ill-treatment. As the reviewed judicial verdicts show, individuals that held senior positions (from a sector head to a head of the municipal or district police station) accounted for 11% of all the categories of the police officers prosecuted for ill-treatment practices.

Such actions of senior officers contribute to the development of ordinary police officers' tolerance to torture and cruel treatment, and a belief that any method can be used to solve a crime and prosecute an offender.

6. THE HIGHEST RISK OF BEING ILL-TREATED IS RUN WHILE THE ARRESTED INDIVIDUAL IS DETAINED AT THE POLICE AGENCIES AND UNITS, PARTICULARLY IN THE OFFICES OF FIELD OFFICERS.

Staying under full control of law enforcement agencies with an absence of the least procedural guarantees to be ensured upon detention of an individual (a right to a lawyer, access to a doctor, and notification of detention of close relatives) create high risks of violation of human rights.

At the same time, cases of ill-treatment in public places are common as well (in the street, at a public transport stop, recreation and catering places) where ordinary citizens become eyewitnesses to the use of disproportional force. Such actions contribute to the formation of a negative opinion of citizens about the police officers, make them unwilling to help the police ensure the public order and solve crimes, and contribute to mistrust in the law enforcement system in general.

7. THE CRIMINAL PROCEDURE CODE OF UKRAINE THAT TOOK EFFECT IN LATE 2012 SET A NUMBER OF MEASURES TO PREVENT EXTRACTIONS OF CONFESSIONS FROM THE SUSPECTS AS TO THEIR INVOLVEMENT IN OFFENSES.

Unfortunately, the study results show that, despite clear legislative bans, extraction of confessions and other information from suspects through violence is still one of the key methods for solving and investigating criminal offenses.

The adoption of the revised Criminal Procedure Code of Ukraine caused the purpose of the use of violence to change: violence currently aims not at extracting a confession from a suspect, but at obtaining evidence of his/her involvement in a crime. If violent actions help obtain evidence of a person's involvement in a crime, the police officers try to legalize them, including through investigative procedures.

One of the widely used approaches to legalization of evidence through torture is crime re-enactment, during which the suspect allegedly willingly describes the circumstances of a crime and the location of material evidence.

During focus group meetings and interviews, the police investigators and district officers also emphasized the position of certain prosecutors, who actually require a confession as a precondition for hearing a case in court.

8. IT SHOULD BE SEPARATELY MENTIONED THAT THERE ARE VARIOUS ARTIFICIAL OBSTACLES PREVENTING A LEGAL INVESTIGATION OF CRIMINAL OFFENSES FROM BEING FULLY CONDUCTED.

Therefore, there are conditions enabling the police officers to use forbidden methods such as extraction of confessions as the simplest method of solving crimes according to the police officers.

Thus, in particular, during interviews and meetings of focus groups with district officers and investigators, we raised the issue of extreme bureaucracy of certain proceedings, in particular when it comes to obtaining eavesdropping warrants and warrants for information retrieval from communication channels. Field officers emphasized that appeal courts issue such warrants only once a week in contravention of the regulations of the Criminal Procedure Code of Ukraine. This creates extreme difficulties for the police officers and prosecutors, who have to cover long distances and queue in lines as police officers from other towns of the region come on the same day.

Field officers and investigators pointed out to the fact that they must draft a petition to a court instead of a prosecutor, and even draft resolutions on covert surveillance instead of courts. In this case, the problem gets even more serious as such procedural documents are coded as classified and they may be drafted only on special "classified" computers and then must be taken for approval to the prosecutor and then the judge. In cases when such drafts need to be corrected, an investigator or a district officer must go back to their police station and then cover all that distance again, and sometimes more than once.

However, the real problem arises at the next phase, after receiving the relevant court decision, when printouts of telephone conversations are obtained because a police officer may obtain such data solely at the headquarters of mobile operators, which are located in Kyiv only.

9. OUR STUDY REVEALED DIFFERENT PRACTICES OF REGISTRATION BY HEALTH CARE INSTITUTIONS OF BODILY HARM OF CITIZENS REQUESTING AID DUE TO BEATINGS BY THE POLICE OFFICERS.

This problem exists due to:

- a lack of uniform medical standards of registration of torture and cruel treatment;
- a low level of qualification of certain medical workers, who must conduct the primary inspection and registration of bodily harm;
- inadequate control by the heads of health care institutions of full reporting on requests and delivery of individuals to health care institutions with criminal bodily harm;
- presence of the police officers during a medical examination of the arrested individual at health care institutions, etc.

10. CURRENT MEDICAL STANDARDS DO NOT REFLECT THE REAL DEGREE OF SEVERITY OF RECEIVED BODILY HARM.

Severity of bodily harm is currently estimated according to the Rules of forensic medical determination of a degree of bodily harm severity developed back in 1995. Pursuant to this Procedure, a lasting health disorder (for over 21 days) is important in determining the average severity degree of bodily harm in the course of a forensic analysis.

However, all the standards and protocols of providing medical aid in case of injuries and diseases have changed since 1995. Modern diagnostic equipment allows conducting necessary diagnostics within a short time period, including that of injuries and their consequences. With this approach, a therapy is assigned without delay and individually, which helps one recover faster. Medicines have become more efficient and the period of taking them is now much shorter. Approaches to the provision of trauma and surgical medical aid and post-operation period have changed. As a result, the period of treatment and, therefore, the time of hospitalization is now much shorter.

RECOMMENDATIONS

TO THE VERKHOVNA RADA OF UKRAINE:

1. Delimit the constituent elements of crimes stipulated by Article 127 (torture) and Article 365 Section 2 (abuse of power and official powers by a law enforcement officer) of the Criminal Code of Ukraine:
 - set punishment for torture solely under Article 127 by bringing its disposition in line with the definition of the term "torture" in Article 1 of the UN Convention against Torture. In particular, stipulate liability for torture not only for actions, but also for inaction, and introduce a separate section of Article 127 that would provide for liability of officials for torture;
 - state the disposition of Article 365 Section 2 so that liability under this Article would be imposed solely for abuse of power and official powers stepped up with the excessive use of force by law enforcement officers during the arrest of public order protection.
2. Toughen liability for torture by increasing the lower threshold of sanctions under this Article to 5 years of imprisonment.
3. Revise the current version of Article 364 of the Criminal Code of Ukraine as regards the definition of material harm caused under Articles 364, 364-1, 365, 365-2, 367, providing that such harm must include not just material damages, but a violation of human and citizen rights and freedoms protected by the Constitution of Ukraine or other laws.

TO THE SUPREME COURT OF UKRAINE:

1. In order to ensure equal application by the courts of laws in determining categories associated with ill-treatment by public officials, generalize the judicial practices in this field.
2. According to the results of generalizing the judicial practices, provide recommended clarifications as to application of legislation in deciding judicial cases involving the use of ill-treatment by public officials. At this,

focus the attention of judges on unacceptability of releasing convicts from full punishment with probation under Article 75 of the Criminal Code of Ukraine, if they are convicted of torture.

TO THE NATIONAL POLICE:

1. Stop practices of interrogation by district officers of individuals suspected of criminal offenses beyond the established procedures. Perform such actions solely within criminal proceedings in a way stipulated by the applicable criminal procedure legislation.
2. Suspend without delay the police officers mentioned in complaints and reports about their use of torture and cruel treatment for the period of an official investigation of such claims.
3. Arrange for all the suspects, eyewitnesses and victims to be interrogated in special rooms equipped with audio and video systems.
4. Take measures to stop unlawful arrests of individuals suspected of committing offenses such as:
 - actual arrest of the suspect without an arrest protocol to be made in accordance with the procedure stipulated by Article 208 of the Criminal Procedure Code of Ukraine;
 - orders given by investigators to district officers to bring an individual for participation in investigation and other procedures with reference to the requirements of Article 40 of the Criminal Procedure Code of Ukraine;
 - orders given to local police inspectors to bring to police stations individuals suspected of committing administrative offenses to find out the circumstances of such offenses.
5. Introduce a new system for evaluating performance efficiency of the police services and units to replace the outdated score system, which consists in evaluating the police performance solely according to quantitative figures (number of solved crimes, number of cases heard in court, etc.).
6. In the system of basic and job-related training of the police officers and qualification improvement courses, introduce trainings on methods of conducting an investigative interview as well as on current standards of the use of force, special measures, and firearms with an emphasis on obligatory compliance with the principles of necessity and proportionality in using it.
7. Take measures to improve the efficiency of psychological support of the police officers. In order to increase the level of trust of the police officers in the psychological service, ensure the maximum confidentiality of communication between a policeman and a psychologist, consider engaging specialized organizations and professionals for providing such services on a contractual basis.

STATE BUREAU OF INVESTIGATION:

1. Make investigations of torture a priority activity.
2. Arrange for its officers to be trained on the specifics of investigating torture, taking into account practices of the European Court of Human Rights under Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.
3. Arrange efficient exchange of information on possible signs of torture with the National Preventive Mechanism and the Special Proceeding Department of the Secretariat of the Ukrainian Parliamentary Human Rights Commissioner.

TO THE MINISTRY OF HEALTH OF UKRAINE:

1. Revise to the procedure for determining the degree of severity of bodily harm without reference to the duration of the victim inpatient treatment.
2. Develop a uniform medical standard for registering torture.
3. Ensure proper registration of bodily harm at health care institutions, including injuries inflicted, according to the victim, by law enforcement officers, and subsequently report to the prosecutor's offices and the newly created State Bureau of Investigation on such cases.

TO THE STATE JUDICIAL ADMINISTRATION, PROSECUTOR GENERAL'S OFFICE, NATIONAL POLICE:

1. Introduce a shared electronic document processing system, including a classified one, for minimizing the time and bureaucratic obstacles in the process of approving procedural documents and making procedural decisions in criminal proceedings.

This study is one of the first attempts to thoroughly examine the factors and causes leading to practices of ill-treatment in the activities of the Ukrainian police. The researchers analyzed a huge amount of facts, which reflect ill-treatment practices and include detailed information on the subjects committing such acts. Thus, we studied statistics of health care institutions concerning requests for medical aid due to bodily harm inflicted by the police officers as well as all the verdicts of the national courts with respect to the police officers issued for ill-treatment crimes (Article 127 and Article 365 Section 2 of the Criminal Code of Ukraine) over a period from 2012 to 2017. Besides, institutional statistics of the General Prosecutor's Office regarding criminal proceedings opened due to ill-treatment practices by the police officers and the opinion of experts representing different components of the criminal justice system were reviewed as well.

Data collected while conducting our study show that, despite a number of measures taken both at the international and national levels, torture and cruel treatment in the activities of the Ukrainian police are still commonplace. The main problem is that the national criminal justice system still relies on the need to obtain a confession from a suspect of having committed a crime as a starting point of the entire process of crime investigations. Confessions are used to obtain information for the evidential base and methods of obtaining the same are often ignored by both the prosecutors and even judges.

Other causes leading to ill-treatment practices include legal loopholes when it comes to establishing the constituent elements of crimes associated with torture as well as punishment for such acts, defects in the organization of the investigation process and interaction between the different components of the criminal justice system, a low professional training level of law enforcement officers.

A report on the results of the study can be useful for a wide number of criminal justice professionals (judges, prosecutors, lawyers, investigators and detectives of the police and the State Bureau of Investigation), experts of the civil society and international organizations, students, post-graduates and professors of law departments.

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