



INTERNATIONAL SOCIETY FOR HUMAN RIGHTS

THE RIGHT TO A FAIR TRIAL IN UKRAINE

REPORT
2020

The report is published with support of the Federal Ministry for Economic
Cooperation and Development



The report is published with support of the Federal Ministry for Economic Cooperation and Development.

The Right to a Fair Trial in Ukraine

Editor: A. Alekseyev

February 2021

INTERNATIONAL SOCIETY FOR HUMAN RIGHTS

International Council, Edisonstraße 5, 60388 Frankfurt am Main
(Germany)

Ukrainian section

Pl. Lesi Ukrainki 1, 01196 Kiev (Ukraine)

Contents

Introduction	9
1 Observance of the right to a fair trial in Ukraine, analysis of the situation, identification of problematic trends	11
1.1 Violation of the principle of reasonable terms of the trial	11
1.2 Inclusion in the evidentiary base of “doubtful” evidence	15
1.3 Incorrect use and/or disregard of the case-law of the ECtHR	18
1.4 Violation of the right to defense	19
1.5 Automatic prolongation of detention	21
1.6 Other violations	24
1.7 Positive trends	25
1.8 Conclusions	26
2 Analysis of statistics	28
2.1 The special situation in the cases of A. Tatarintsev and A. Melnik	28
2.2 Publicity of court hearings	28
2.3 Situation with observance of the right to a fair trial in Ukrainian courts	29
2.4 Court hearings	31
2.5 Correlation of the number of detected violations with incriminated crimes . . .	32
2.6 Equality of the parties	34
2.7 Proceedings imbalance	34
2.8 Relationship between the charge and the number of violations in the trial . . .	35
2.9 Conclusions	37
3 Reports of the monitoring of court sessions in 2020	43
3.1 The trial of Evgeny Anisimov and others	43
3.2 The trial of Sergey Atroshchenko and others	49
3.3 The trial of Igor Avramenko	53
3.4 The civil proceedings of LLC “BIOL”	54
3.5 The trial of Igor Bliznyuk and others	56
3.6 The trial of Alexander Chibirdin	62
3.7 The trial of Vladimir Dovgalyuk	63
3.8 The trial of Nazar Dubensky	64
3.9 The trial of Roman Dubinevich	65
3.10 The claim of Iosif Dudich	68
3.11 The trial of Alexandr Efremov	70
3.12 The trial of Vladimir Evstigneev	71
3.13 The trial of Alexandr Filtsev	72
3.14 The trial of Dmitry Gubin	74
3.15 The trial of Igor Gumenyuk	74
3.16 The trial of Anatoly Hranovskiy	76
3.17 The trial of Igor Ignatov	79
3.18 The trial of Igor Kachur	79
3.19 The trial of Petr Karpenko	80
3.20 The trial of Gennady Kernes and others	82
3.21 The trial of Anton Kitaev	84

3.22	The trial of Marina Kovtun	85
3.23	The trial of Sergey Kozak	87
3.24	The trial of Leonid Kozhara	88
3.25	The trial of Maksim Krivosch	89
3.26	The trial of Konstantin Kulik	91
3.27	The trial of Kulish Natalya	92
3.28	The trial of Dmitry Kurylenko	98
3.29	The trial of Andrei Lesik	99
3.30	The trial of Igor Lozinsky and others	101
3.31	The trial of Bogdan Maistruk	103
3.32	The trial of Vladislav Manger and others	104
3.33	The trial of Aleksander Melnik and others	112
3.34	The trial of Maksim Mikitas	141
3.35	The trial of Konstantin Mirchenko	143
3.36	The trial of Vasily Mokrinsky and others	143
3.37	The trial of Vasily Muravitsky	144
3.38	The case of Naftogaz of Ukraine	147
3.39	The trial of Vladimir Pakholok	149
3.40	The trial of Roman Petruk	150
3.41	The trial of Andrey Polivoda	151
3.42	The trial of Sergey Popov	152
3.43	The trial of Inna Popovskaya	155
3.44	The trial of Grigory Radutny and others	156
3.45	The trial of Grigory Radutny and others	157
3.46	The trial of Anton Rosevtsov and others	159
3.47	The trial of Yuri Rossoshansky	160
3.48	The trial of Evgeny Sagaidak	166
3.49	The trial of Sergey Sergeyev and others	170
3.50	The trial of Shapoval	173
3.51	The trial of Alexander Shchegolev	175
3.52	The Sheremet case	180
3.53	The trial of Nelia Shtepa	181
3.54	The trial of Ivan Shurman	187
3.55	The trial of Vitaliy Sobenko and others	191
3.56	The trial of Sorokin and Sorokin	192
3.57	The trial of Nikolai Sorokopud and others	195
3.58	The trial of Alexander Streletsky and others	195
3.59	The trial of Irina Sukhanova	198
3.60	The trial of Irina Sukhorukova	200
3.61	The trial of Andrei Tatarintsev	201
3.62	The trial of Oleg Tatarov	224
3.63	The trial of Valery Terekhov	225
3.64	The trial of Ilya Turman	225
3.65	The trial of Valentyn Tyapkin	227
3.66	The trial of “Ukrainian Railways”	232
3.67	The trial of Svetlana Vanzha	234
3.68	The trial of Voitenko and others	234
3.69	The trial of Alexander Volkov	236
3.70	The trial of Pavel Volkov	238

3.71	The trial of Viktor Yanukovich	239
3.72	The trial of Alexey Yarkovoy	248
3.73	The trial of Zinchenko and others	248

Abbreviations

CPC	Criminal Procedure Code
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	United Nations Economic and Social Council
ECtHR	European Court of Human Rights
EU	European Union
IM	Interior Ministry
IMF	International Monetary Fund
ISHR	International Society for Human Rights
ORDLO	Particular Districts of Donetsk and Lugansk Regions
OSCE	Organization for Security and Co-operation in Europe
QDCB	Qualification and Disciplinary Commission of the Bar
SBU	Ukrainian Secret service
UN	United Nations

The International Society of Human Rights connects sections of human rights defenders from many countries on all continents. On UN's Human Rights Day 1993, December 10, 1993 25 Ukrainian human rights activists – members of the International Society for Human Rights globally – established the international public organization “International Society for Human Rights – Ukrainian Section” (ISHR-US). Today ISHR in Ukraine has more than 3,500 members.

The observation of court trials always has been a vital instrument. In 2020, more than 150 reports on trials in the Ukraine were written. The general report build on these monitoring reports consists of three parts: the first part – identification of the negative trends in the judicial system; the second part – analysis of the collected information; and the third part – short reports on the monitoring of court sessions.

Having met the lawyers involved in the writing of this report I have to underline the importance of such unbiased information about the situation in Ukraine and its value to the international community. Unbiased reports from a purely legal perspectives like this are an intrinsic part of European civil society and the idea of a modern democracy.

The protection of human rights defenders and lawyers is a prominent concern for the ISHR, the United Nations, and other international human rights organizations. Publicizing the work of human rights defenders often is an effective way to enhance their protection.

However, lawyers seeking to protect the human rights of accused persons often face the risk of persecution by those who prefer to keep such criminal cases quiet and out of public view. It is important for human rights organizations to sensitively balanced the value of disseminating information publicly and the possibility that by doing so, they may risk exposing lawyers or other human rights defenders to physical harm.

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

Thus times of turmoil, civil war, legal insecurity and even war are not times to give up on human rights, but are times to even more emphasize that all human beings share the same human dignity and the same human rights and that the major and most honorable task of all States is to preserve them. This includes the necessity for the State to watch its own performance – called checks and balances in political history – and the need for civil society to watch and evaluate how the State is performing.

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

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

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

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

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

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

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

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

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

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

About the International Society for Human Rights

The International Society for Human Rights (ISHR) and its national branches are independent non-governmental human rights organizations (NGOs) which base their work on the Universal Declaration of Human Rights adopted by the United Nations. The ISHR seeks to promote international understanding and tolerance in all areas of culture and society. It is a non-profit organization, independent of all political parties, governments or religious groups. The ISHR acts on the philosophy that the realization of human rights and the improvement of social conditions cannot be pursued through the use of force. The ISHR was founded in 1972 to support individuals who share this principle and therefore seek to assert their rights in a non-violent manner.

Our society has about 30 000 members in 38 countries. The ISHR has consultative status (Roster) at the United Nations ECOSOC, consultative status with the European Council, observer status at the Organisation of the African States and associated status with the Office of Public Information of the United Nations. The organization is mainly financed by donations and contributions.

Priority areas of our work are:

1. Support of individuals or groups who are persecuted, imprisoned, and/or discriminated against;
2. Public relations in regards to human rights issues;
3. Education on human rights issues;
4. Humanitarian aid.

Introduction

In 2020, the International Society for Human Rights continued to monitor the observance of the right to a fair trial in Ukraine¹. The monitoring was carried out within the framework of the project of the Ministry of Economic Development and Cooperation of the Federal Republic of Germany “Strengthening the rule of law in Ukraine”.

For the fourth year in a row, we have been able to significantly increase the amount of work. In 2020, 157 court sessions were monitored. The number of trials monitored by ISHR continues to grow (2017 – 9 trials, 2018 – 18 trials, 2019 – 42 trials, 2020 – 72 trials) (see Fig.0.1).

Despite the difficulties caused by the coronavirus pandemic and subsequent quarantine measures, the ISHR has not only increased “quantitative indicators” of monitoring of court cases, but also continued to conduct the working meetings planned within the framework of the project “Strengthening the rule of law in Ukraine”. In 2020, we held 12 working meetings and round tables in six regions of Ukraine (Kiev, Kharkov, Poltava, Zaporozhye, Zhitomir, Lvov). As part of these events, we continued to establish working ties in the regions, as well as familiarized representatives of the local legal community with the results of the work already done, discussed the problems faced by the judicial system, outlined the contours of further joint work. In total, events in 2020 were attended by 165 participants. And over the two years, our events were attended by 294 participants (including 129 participants of round tables held in 2019).

Students of law schools and faculties from different regions of the country took an active part in activities related to the implementation of the project (round tables, monitoring of court hearings, meetings with students at uni-

versities). The organizers of the project held negotiations with representatives of the Boris Grinchenko Kiev University, Yaroslav Mudriy National Law University, Poltava Law Institute and Kharkov National University of Internal Affairs on the matter of internship for law students in the ISHR. In 2020, the educational activities in the field of strengthening the rule of law has also reached out to the legal professionals. In October 2020, ISHR specialists held a webinar “Using the practice of the ECtHR and the tools of the ISHR”, certified by QDCB, for more than 1,700 lawyers from Dnepropetrovsk and Zaporozhye regions.

Last year, our work reached an international level – the specialists of the ISHR began monitoring the observance of the right to a fair trial in Armenia. We published first reports with the results of the monitoring of court hearings in this country.

Monitoring, as an area of advocacy, contributes to the transparency of the judicial proceeding and is a means of maintaining the right to a public trial. During the monitoring period, we were convinced more than once that the presence of observers drives the courts to improve compliance with the guarantees of a fair trial and build confidence in legal proceedings. Trial monitoring, as a long-term program, is becoming a unique diagnostic tool for key components of the justice system. This is especially relevant during the period of the next judicial reform in Ukraine. In addition, according to OSCE experts, trial monitoring programs are also an effective mechanism for training and involving lawyers and organizations in the process of reforming justice systems².

As in previous years, attendance of court hearings by ISHR observers, and the publication of reports on the results of court hearings is the main form of our monitoring (the total time of court hearings on which reports were prepared in 2020 exceeds 346 hours or 43 full

¹Work in this area began in 2017. Details on observations over previous years can be found in the reports “Monitoring the observance of the right to a fair trial in Ukraine. 2017”, “The right to a fair trial in Ukraine. 2018” and “The right to a fair trial in Ukraine. 2019”

²P.11“Monitoring of trials. A Practitioner’s Reference Guide” Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) Ul. Miodowa 10 00 -251 Warsaw Poland

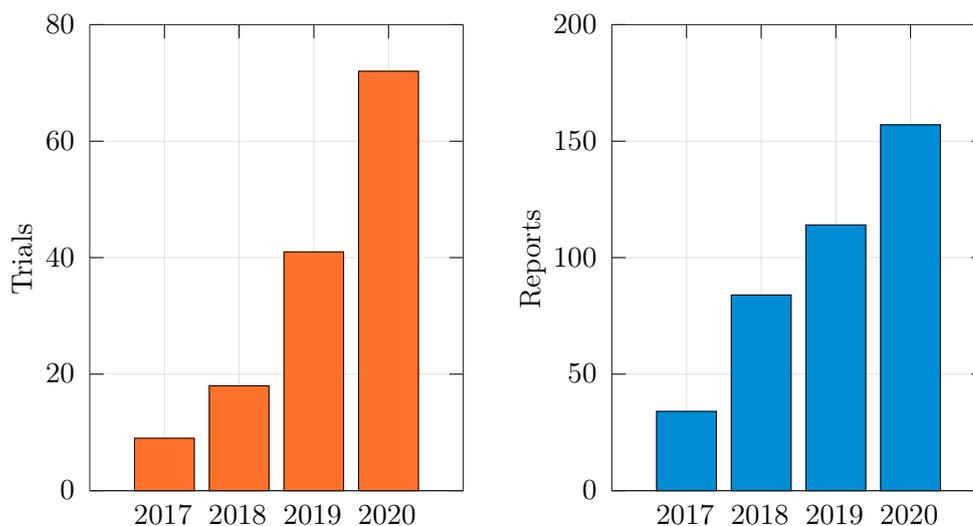


Figure 0.1: Monitoring dynamics.

working days). It should be noted that due to the quarantine restrictions caused by the coronavirus pandemic, some of the observations were carried out using official broadcasts of court hearings. ISHR experts actively interacted with representatives of the legal profession and the court, exchanged information during working meetings and attending court hearings, and also communicated with the courts to conduct video broadcasts of court hearings of specific criminal cases. When preparing our materials, we try to rely on official documents (court decisions, petitions of the parties, etc.) provided to us by the parties, and official video broadcasts of court sessions. An important part of this activity is communication with the defendants and their relatives. Monitoring materials are regularly published on the Internet resources of the ISHR, distributed among politicians and public figures of the EU countries, Ukrainian, European and American lawyers and human rights defenders, representatives of the OSCE monitoring mission in Ukraine and so on.

In the annual report, we will once again try to highlight the main negative trends in the field of human rights violations, identified during the monitoring, and qualify them, relying on the sources of international human rights law, primarily the European Convention and the practice of the ECtHR, and also analyze the statistical information collected during the monitoring, and compare the data obtained with the information collected in previous years.

Traditionally, the report consists of three parts: the first part – consideration of the negative trends identified in the field of legal proceedings, the second part – the analysis of the collected statistical data and the third part – the reports on the monitoring of court sessions, which served as a source in the preparation of the report itself.

1 Observance of the right to a fair trial in Ukraine, analysis of the situation, identification of problematic trends

During the monitoring, based on the identified negative trends of the past years, we collected data on similar cases recorded by our observers in 2020. Based on the information received, a list of negative trends for 2020 was formed.

In total, 243 human rights violations were recorded by the observers of the ISHR during the reporting period. It should be noted that this figure is 130% higher than the number of violations identified in 2019¹, although the total number of observations, compared to last year, increased only by 30%². The reasons for such deterioration in the situation will be discussed below.

We have repeatedly encountered each of the violations that will be discussed in this part of the report during the monitoring of various criminal proceedings. Namely the “specific gravity” of each group of violations, in relation to the total number of violations revealed, makes it possible to speak of the presence of established negative trends. Observers and experts of the ISHR encountered each of them in previous years (see table 1.1).

Speaking of negative trends, one cannot but pay attention to the positive aspects revealed during the monitoring. For example, in 21% of hearings, our observers did not register violations. The topic of positive trends will be discussed in more detail in this section.

Traditionally, in our assessment of violations of international human rights norms, we primarily relied on the European Convention and the ECtHR, which clarifies its practice.

The identified trends include:

1. violation of the principle of reasonable terms of the trial;
2. inclusion in the evidentiary base of “doubtful” evidence;

3. incorrect use and/or disregard of the case-law of the ECtHR;
4. automatic prolongation of detention;
5. violation of the right to defense;
6. other violations;
7. positive trends.

Let's consider them in more detail.

1.1 Violation of the principle of reasonable terms of the trial

It is not the first year that the violation of the principle of reasonable terms of the trial is the most frequent violation recorded by the observers of the ISHR. Unfortunately, 2020 was no exception. The results of the monitoring indicate significant problems with compliance with Article 6 of the European Convention, which, among other things, declares the obligation of the state to ensure that the person who is charged with any criminal charge receives a fair hearing within a reasonable time.

It should be noted that in criminal proceedings, the observance of the principle of reasonable time is of the utmost importance, since often a measure of restraint that restricts freedom (i.e. detention) is applied to suspects/accused. This means that in case of violation of the reasonableness of the terms, the rights of an innocent person (from the point of view of the presumption of innocence) remain “cut down” for an unreasonably long time, which, among other things, can be regarded as inhuman treatment and torture (Article 3 of the European Convention).

In 2020, many proceedings revealed a large number of violations of the principle of reasonable time. For example, in the most high-

¹106 violations

²114 reports published in 2019

Violation of the principle of reasonable terms of the trial	36%
Inclusion in the evidentiary base of “doubtful” evidence	21%
Automatic prolongation of detention	18%
Incorrect use and/or disregard of the case-law of the ECtHR	17%
Violation of the right to defense	16%
Ignoring court decisions	13%
Torture and degrading treatment	11%
Other	11%
Placing the burden of proof on defense	7%
Pressure on the court	2%
Pressure on lawyers	1%
Blocking the participation of the accused and witnesses in the trial	0%

Table 1.1: Proportion of each group of violations in relation to the total number of court sessions attended by observers

profile proceedings in the case of ex-President of Ukraine Viktor Yanukovich, regarding the events during the mass protests on the Maidan in 2014, the pre-trial investigation has been going on for more than six years, despite the fact that the Criminal Procedure Code of Ukraine for this kind of proceedings provides for the maximum period of pre-trial investigation – eighteen months. Consideration of one issue that concerns a measure of restraint (first its election, then cancellation, and then an explanation of its decision by the court at the request of prosecutors) has been going on for six months³.

The case of Vitaly Sobenko and Artur Melnik has been at the preparatory stage since 2014. Very often hearings cannot take place, for example, due to the absence of participants⁴. This situation has been observed in other cases⁵ and may have signs of a delay in the proceeding. In the case of Ivan Shurman, where the defense lawyer systematically filed petitions to postpone the hearing due to the fact that she could not attend the hearing, the court was forced to involve “public defender” to resolve only one issue – the extension of

the measure of restraint⁶. In the trial against opposition journalist Vasily Muravitsky, the sessions were postponed due to the absence, for unclear reasons, of lawyer S. Novitskaya. Although the right of the accused to a defense was not violated, since a new lawyer A. Gozhiy was present at the hearings, the consideration of the case was postponed solely for the purpose of officially recognizing the termination of the contract between the journalist and one of his lawyers, which in itself cannot impede the consideration of the case on the merits^{7,8}.

In the case of I. Bliznyuk and others, there was a systematic failure to appear by the victims, the prosecution or witnesses^{9,10,11}. Also, in the same case, and in a number of other proceedings, delays in the consideration of the case very often occurred due to the absence of witnesses or due to the fact that the prosecutor did not ensure the appearance of wit-

³See Monitoring of the case of V.F. Yanukovich (hearing 12/22/2020)

⁴See Monitoring of the case of Vitaly Andreevich Sobenko and Artur Vladislavovich Melnikov (hearing 01/29/2020)

⁵See Monitoring of the case of Dmitry Gubin (hearing 02/21/2020)

⁶See Monitoring of the case of Ivan Vladimirovich Shurman (hearing 11/24/2020)

⁷See Monitoring of the case of Vasily Muravitsky (hearing 02/18/2020)

⁸See Monitoring of the case of Vasily Muravitsky (hearing 03/20/2020)

⁹See Monitoring of the case of I.A. Bliznyuk, A.O. Golovkin, Yu.M. Khlapovsky (hearings 10/03/2020 and 11/03/2020)

¹⁰See Monitoring of the case of I.A. Bliznyuk, A.O. Golovkin, Yu.M. Khlapovsky (hearing 07/02/2020)

¹¹See Monitoring of the case of I.A. Bliznyuk, A.O. Golovkin, Yu.M. Khlapovsky (hearing 10/15/2020)

nesses^{12,13,14,15}.

Once again, it is worth paying attention to the case of Alexandr Melnik and others, in which constant delays occur due to the fact that the panel of judges cannot meet in full. For this reason, the consideration of the case, which has already been heard for six years, does not move at all¹⁶.

The problem with the slow “progress” of the case also exists in the proceedings of N. Shtepa. This judicial review is still at the stage of a preparatory hearing (although the indictment was filed back in 2014), the judges often refuse to take part in the trial (for example, declare recusal) and the consideration starts from the beginning for the fifth time¹⁷. It was also noted that hearings were scheduled, but did not take place for various reasons (lawyers or the accused were unable to participate in the hearings) or took place, but exclusively procedural issues were resolved^{18,19}. A similar situation was observed in the cases of A. Shchegolev²⁰, N. Shapoval²¹, I. Bliznyuk and others²², where only issues of extending the measure of restraint were considered at court sessions.

Sometimes delays occurred due to the fact that one of the parties at the hearings was provided with evidence that is not directly related

to the prosecution and does not contribute in any way to the court in the consideration of the case. Observers noted a similar situation in the case of I. Bliznyuk and others²³ and in the case of N. Sorokopud²⁴.

It should be noted that the hearings were postponed for various reasons, incl. and due to the unpreparedness of the prosecutors or because the prosecutors were returned the indictment to eliminate inaccuracies^{25,26,27}. This negatively affects the observance of a reasonable time frame for the consideration of the case.

Also, more than once observers noted a situation when the courts did not consider procedural documents in due time, which also negatively affects the observance of the principle of reasonable time limits²⁸. For example, in the well-known case of A. Melnik and others, where the revision of the rulings on the extension of a measure of restraint in the form of detention was carried out after the end of their validity period, that is, after the next extension of detention by the court of first instance²⁹.

Poor organization of the trial is another factor that also violates the principle of reasonableness of the timing of the trial. For example, in the case of journalist Pavel Volkov, at the beginning of the court session, the panel of judges announced that the consideration of the case should be postponed due to the fact that one of the judges went on vacation without notifying the defense, although the lawyer had to travel more than 500 km to take part

¹²See Monitoring of the case of Neli Igorevna Shtepa (hearing 09/18/2020)

¹³See Monitoring of the case of Vasily Mokriinsky and Roman Frankovsky (hearing 10/13/2020)

¹⁴See Monitoring of the case of Anton Alexandrovich Rosevtsov and Yaroslav Yuryevich Bozhiy (hearing 10/26/2020)

¹⁵See Monitoring of the case of M.S. Voitenko, A.D. Plavak, A.P. Kosolapy, R.V. Bogaychuk, V.M. Sidoruk (hearing 11/20/2020)

¹⁶See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 11/19/2020)

¹⁷See Monitoring of the case of Nelia Igorevna Shtepa (hearing 08/17/2020)

¹⁸See Monitoring of the case of Nelia Igorevna Shtepa (hearings 10/07/2020, 10/16/2020)

¹⁹See Monitoring of the case of Nelia Igorevna Shtepa (hearings 09/04/2020, 09/10/2020)

²⁰See Monitoring of the case of Alexander Shchegolev (hearing 09/18/2020)

²¹See Monitoring of the case of N.P. Shapoval (hearing 04/27/2020)

²²See Monitoring of the case of I.A. Bliznyuk, A.O. Golovkin, Yu.M. Khlapovsky (hearing 08/10/2020)

²³See Monitoring of the case of I. Bliznyuk, A. Golovkin, Yu.M. Khlapovsky (hearing 11/19/2020)

²⁴Monitoring of the case of Nikolai Alexandrovich Sorokopud, Nikolai Vladimirovich Omelyanyuk (hearing 12/23/2020)

²⁵See Monitoring of the case of Andrei Tatarintsev (hearing 11/25/2020)

²⁶See Monitoring of the case of Igor Alexandrovich Avramenko (hearing 05/15/2020)

²⁷See Monitoring of the case of Anton Alexandrovich Rosevtsov and Yaroslav Yuryevich Bozhiy (hearing 10/26/2020)

²⁸See Monitoring of the case of the purchase of diesel fuel of the Joint Stock Company “Ukrainian Railway” (hearing 07/27/2020)

²⁹See Monitoring the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 05/21/2020)

in the hearing that did not take place³⁰.

Another of the problems of the length of the consideration of the case was the fact that due to the lack of judges, they were repeatedly transferred from one court to another, for example, this was observed in the cases of N. Shtepa³¹ and S. Popov³².

Based on the above, we can conclude that one of the main reasons for the violation of the principle of reasonable time is the systematic absence of participants in the proceedings, most often – witnesses, which was noted by observers in many reports.

Reasonableness of the terms of the trial is one of the most important components of the right to a fair trial guaranteed by paragraph 1 of Article 6 of the European Convention. As a fundamental requirement for the functioning of the judicial system, it is often addressed to Ukraine in the decisions of the ECtHR (“Vergelsky v. Ukraine”, “Borotyuk v. Ukraine”, “Doroshenko v. Ukraine”, “Yaroshovets and others v. Ukraine”, “Gavrylyak v. Ukraine” and others). But, despite the systematically found violations of Article 6 of the European Convention, the situation does not change, which indicates the need to once again return to the origins of the concept of reasonable time limits and the peculiarities of their application by the ECtHR.

Paragraph 1 of Article 6 of the European Convention recognizes that every person prosecuted in a criminal case has the right to receive, within a reasonable time, a final decision on the justification of the charge against him or her, or rather to ensure that the accused do not remain under the weight of the charge for a long time and that a decision was made on the well-foundedness of the charge (“Vemkhov v. Germany” § 18, “Giulia Manzoni v. Italy” § 25, “Brogan and Others v. The United Kingdom” § 65). This means that the period to be taken into account lasts until the situation of the person concerned ceases to be affected

by the charges brought against him and the uncertainty about his legal status is removed (“Nakhmanovich v. Russia” § 89). In its case-law, the ECtHR insists on the special duty of the domestic courts to ensure that all parties to the proceedings, especially the judges, do their utmost to avoid undue delay in the adjudication of the case (“McFarlen v. Ireland”, no. § 121, “Vernillo v. France” § 38). The provisions of Article 6 of the European Convention indicate that accused persons cannot remain in the dark about their fate for too long, since this, among other things, makes the person suffer from a sense of uncertainty about his future (“Nakhmanovich v. Russia” § 89, “Ivanov v. Ukraine” § 71).

According to the ECtHR, “by requiring the consideration of cases within a “reasonable time”, the European Convention emphasizes the importance of administering justice without delays, which may jeopardize efficiency and credibility (“Vernillo v. France”, § 38). The reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the case and taking into account the following criteria: the complexity of the case, the subject of the dispute, the behavior of the applicant and the relevant state authorities (“Chiarello v. Germany” § 45, “Vergelsky v. Ukraine” § 116, “Affare Culott v. France”, § 23, “Koenig v. Germany” § 99, “Smirnova v. Ukraine” § 66, “Borutyuk v. Ukraine” § 61, “Duklos v. France” § 55).

It is necessary to separately note the peculiarity of fixing this negative trend. In some cases, a situation is emerging in which a violation of the principle of reasonableness of the terms of a trial is a “continuing” violation, i.e., such as occurs in all subsequent hear-

³⁰See Monitoring the case of journalist Pavel Volkov (hearing 02/25/2020)

³¹See Monitoring of the case of Nelia Igorevna Shtepa (hearings 09/04/2020, 09/10/2020)

³²See Monitoring of the case of S.V. Popov (hearing 10/06/2020)

ings^{33,34,35,36,37,38,39,40,41,42}. Of course, this factor is not the only factor⁴³, but it has a significant impact on the fact that the trend has been among the leaders of negative trends for the second year. This, on the one hand, indicates the existence of a problem that was not resolved during the trials of 2020, and on the other, that this violation is, in part, “passive” i.e., the subjects of the violation do not need to take any action to implement the violation. Moreover, it is more likely that inaction (or inadequacy of the actions taken) takes place, which leads to a violation.

1.2 Inclusion in the evidentiary base of “doubtful” evidence

Under “doubtful” evidence, the experts of the ISHR mean the evidence that, according to the CPC, can be regarded as inadmissible, for example, obtained or presented to the court, in violation of the procedural law. Throughout 2020⁴⁴ observers more than once noted in their reports the fact that a number of “doubtful” evidences were attached to the case materials, and evidence that was not directly related to the prosecution was often used. The experts

³³See Monitoring the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 06/02/2020)

³⁴See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 07/28/2020)

³⁵See Monitoring the case of Andrei Tatarintsev (hearing 08/28/2020)

³⁶See Monitoring the case of Igor Gumenyuk and Sergei Kraynyak (hearing 09/23/2020)

³⁷See Monitoring the case of Tyapkin Valentin Ivanovich (hearing 11/27/2020)

³⁸See Monitoring the case of Bliznyuk I.A., Golovkin A.O., Khlapovsky Yu.M. (hearing 12/02/2020)

³⁹See Monitoring of the trial of S. Zinchenko, P. Ambroskin, A. Marinchenko, S. Tamtura, O. Yanishevsky (hearing 03/17/2020)

⁴⁰See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 04/09/2020)

⁴¹See Monitoring the case of Aleksandr Sergeevich Efremov (hearings 06/16/2020, 06/19/2020)

⁴²See Monitoring of the case of Aleksandr Shchegolev (hearing 06/23/2020)

⁴³Other reasons, with examples, are described in detail above

⁴⁴Compared to 2019, the number of such violations has increased

of the ISHR suggest that the provision of this kind of evidence to the court can be carried out with the aim of delaying the proceeding, or as an attempt to maximize the number of volumes of the case, complicating it.

During the monitoring of the court sessions, the observers noted that often the court was provided with inappropriate evidence, often this was done in violation of certain procedural norms, such as in the civil proceedings of “BIOL” LLC against O. Dunaev, where instead of the original of the contested contract, the court was provided with a copy of the contract certified by the court (while the Civil Procedure Code of Ukraine indicates that the circumstances of the case, which, according to the law, must be confirmed by certain means of proof, cannot be confirmed by other means of proof). However, no documents were provided that would confirm the words of the representative of O. Dunaev about the authenticity of the copy of the agreement⁴⁵. In the criminal proceedings in the case of the activist of the nationalist party VO “Svoboda” Sergei Kraynyak, the court carried out a selective study and the announcement of four volumes of not certified photocopies of documents, without a preliminary resolved issue regarding their addition to the materials of the criminal proceedings. According to the lawyer, the court changed the procedure and method of examining evidence. The defense insisted that the documents submitted by the prosecutor were falsified, since they were not properly drawn up, however, they were accepted by the court⁴⁶.

In certain proceedings (for the defense side), the situation developed in the opposite way. The court did not take into account the evidence of the lawyers (without specifying the reasons) and relied only on the evidence of the prosecution. For example, in the case of A. Melnik and others, the defense provided the court with evidence of another version of the events of the crime (murder, in this case), which contradicts the one provided by the pros-

⁴⁵See Monitoring of the civil proceeding of “BIOL” LLC against O. Dunaev (hearing 02/25/2020)

⁴⁶See Monitoring of the case of Igor Gumenyuk and Sergei Kraynyak (hearing 09/23/2020)

ecution. But the court attached only a small part of the evidence that the defense provided to the case materials, arguing that the documents are not proper evidence, that is, those that do not relate to this criminal proceeding. In this situation, it is necessary to note the position of the Supreme Court, in its decision of 01/21/2020 in case No. 754/17019/17, it is indicated that the presence of a different version of events is the basis for reasonable doubt in the proof of guilt. The court cannot disregard that part of the evidence (and the circumstances established on its basis) only because they contradict the prosecution's version^{47,48}. This example indicates that the principle of "doubtful" evidence can also be used as a tool to prevent the inclusion of alternative (to official prosecution's version) versions of events in the evidence base.

Similar situation was observed in the case of A. Kitaev, where the defense's petition for temporary access to the data of the mobile operator about the incoming and outgoing phone calls of Kitaev and witness Tumanov was rejected by the court, which motivated its decision by the premature submission, although there is no such concept in the legislation⁴⁹.

In the case of A. Tatarintsev, at one of the hearings, the court did not make any decision on the defense's motion to declare as obviously inadmissible a number of evidences from the prosecution, but gave the prosecutor time to establish the circumstances referred to in the petition filed⁵⁰.

In the case of A. Melnik, A. Kryzhanovsky, I. Kunik, the defenders repeatedly noted cases where the prosecution field evidence, to the case materials, obtained in violation of procedural norms: -a search carried out in violation of the procedure established by the Criminal Procedure Code, during which material evidence was seized⁵¹; -the prosecutor

presented to the court material evidence, which was "packed" by the Poltava Court of Appeal, despite the fact that the case was not considered by the Poltava Court of Appeal, especially since the material evidence in the case was not examined. The prosecutor was unable to reasonably explain the origin of the packaging and the fact that the evidence was sealed by the appellate court. In the course of the court's examination of material evidence, the defense demanded that the objects be measured, but the court indicated that they were not experts and could not take measurements. For the same purpose, the lawyers filed a motion to summon the experts to the court, but it was refused⁵²; -lawyer R. Lazorenko drew the observer's attention to the fact that some of the evidence that the defense considers important is not provided to lawyers by the prosecution for review and study. Lawyers have repeatedly filed motions to oblige the prosecutor's office to provide documents for review, but the court did not satisfy any of them⁵³; -the prosecutor filed a motion to examine the optical disc, which, according to state prosecutors, recorded cars similar to the car of the murdered mayor of Kremenchug Babayev and the VAZ 2108 car. But the defense side objected to the admission of this evidence to the case due to their obvious inadmissibility. The lawyers insisted on the unknown source of information on the disk, as well as the method of obtaining information⁵⁴; -the defense categorically objected to the admission to the case of the evidence of the prosecutor related to temporary access to documents, pointing out that the investigator received these documents without having the authority to do so. Temporary access is always preceded by appropriate permission from the investigating judge⁵⁵; -the defense argued that some of the decisions of

novsky, I. Kunik (hearing 09/30/2020)

⁵²See Monitoring the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearings 08/11/2020; 08/12/2020; 08/13/2020)

⁵³See Monitoring the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 09/15/2020)

⁵⁴See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 03/12/2020)

⁵⁵See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 05/20/2020)

⁴⁷See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 06/24/2020)

⁴⁸See. Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 07/21/2020)

⁴⁹See Monitoring of the case of Anton Kitaev (hearing 08/19/2020)

⁵⁰See Monitoring of the case of Andrei Tatarintsev (hearing 08/28/2020)

⁵¹See. Monitoring the case of A. Melnik, A. Kryzha-

the investigating judges on temporary access to information about the connections of mobile subscribers, the corresponding protocols and optical discs were not disclosed to the accused and the lawyers. Due to the fact that a protocol was drawn up on their basis and an optical disc was received, all the evidence listed above is inadmissible. Despite the statements of the defense about the impossibility of further investigation of such documents, the court continued to consider the data from the optical disc. This decision was motivated by the fact that, although the definitions of the investigating judges were not open, studies of the protocol and disc are possible, since the latter were open to the defense⁵⁶. The above examples make it possible to assess such behavior of the court as unacceptable and biased.

Also, in the proceedings of A. Tatarintsev⁵⁷ and E. Sagaidak⁵⁸ the observers noted that the defense focused on the fact that such evidence as the protocol of the arrest of the suspect, which was drawn up in violation of the norms of the Criminal Procedure Code, cannot be considered admissible.

In the criminal proceedings in the case of the murder of activist E. Gandzyuk, the defense believes that all evidence collected after November 2, 2018 is inadmissible, since the investigation was carried out by an inappropriate body⁵⁹. In the same case, the defense noted that the prosecutor tends to independently establish certain facts in the case, which is a direct violation of the current Criminal Procedure Code of Ukraine, according to which the facts in criminal proceedings are established by a court verdict, and before the verdict is pronounced, all data cited by the prosecution are considered circumstances that must be proven and verified by the court⁶⁰.

An interesting situation was observed in the

⁵⁶See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 05/21/2020)

⁵⁷See Monitoring of the case of A. Tatarintsev (hearing 09/03/2020)

⁵⁸See Monitoring of the case of Evgeny Sagaidak (hearing 12/8/2020)

⁵⁹See Monitoring of the case of Vladislav Manger, Alexey Levin (hearing 11/03/2020)

⁶⁰See Monitoring of the case of V. Manger, A. Levin (hearing 12/04/2020)

case of the murder of journalist P. Sheremet, where the prosecutor, when deciding on a measure of restraint, spoke about the examination of video footage from CCTV cameras, which established the height of killers, and after the defense began to use this data to confirm the innocence of the suspects, since the height of the suspects differs by about 10 cm, the prosecutor spoke as follows: it was concluded that the height of people cannot be determined at all when walking, and the expert did not determine even approximately the height. Observers of the ISHR focused on the fact that the only evidence that the prosecutor operated on was this very examination⁶¹.

While Article 6 of the European Convention guarantees the right to a fair trial, it does not lay down any rules on the admissibility of evidence as such, which is therefore primarily subject to regulation under national law. The question that the ECtHR considers it necessary to answer is whether the proceedings were generally fair, including the way in which the evidence was obtained. This includes considering the possible “illegality” of the way the evidence was obtained and, if it is a violation of another right⁶², the nature of the violation found (“PG and JH v. The United Kingdom”, § 76, “Heglas v. Czech Republic”, §§ 89-92, “Bochan v. Ukraine”, § 78, “Telfner v. Austria”, § 15).

Certain principles regarding the concept of a fair trial derive from the requirement of “equality of arms” in the sense of a “fair balance” between the parties. With respect to litigation, “equality of arms” means a reasonable opportunity given to each party to present its case – including evidence – in conditions that do not place it at a material disadvantage vis-à-vis its adversary (“Dombo Beheer BV v. The Netherlands”, § 33, “Fouche v. France”, § 34, “Avotins v. Latvia”, § 119).

However, the position of the ECtHR suggests that in order to comply with the principle of a fair trial, evidence must be presented at a public hearing in the presence of the ac-

⁶¹See Pre-trial investigation in the case of P. Sheremet (hearings in February 2020)

⁶²according to the European Convention

cused for adversarial reasoning. In the event that the inability to question or interview witnesses is due to their absence, the authorities should make reasonable efforts to ensure their presence. Finally, a conviction should not be based solely or decisively on the testimony of a witness whom the accused did not have the opportunity to question either during the investigation or in court (“Bonev v. Bulgaria”, § 43, “Al-Kawaya and Taheri v. The United Kingdom”, § 120, “Bochan v. Ukraine”, § 78).

1.3 Incorrect use and/or disregard of the case-law of the ECtHR

In 2020, ISHR observers were more likely to encounter misuse and/or disregard of the ECtHR practice. This trend, recorded back in 2018, was not included in the list of the main negative trends in the 2019 report, but, unfortunately, returned to this list in 2020.

In the case of A. Melnik, A. Kryzhanovsky, I. Kunik, observers have repeatedly noted the complete disregard for two decisions of the ECtHR specifically in this case. Thus, the ECtHR, having considered all the available materials, considers that in this case the duration of the pre-trial detention of the applicants was excessive, but the judges of the Gadyatskiy District Court continue to constantly extend the measure of restraint for the accused^{63,64,65}. This situation, with deliberate disregard for the decisions of the ECtHR, is contrary to law enforcement practice.

Also, in this case, it was noted that in the petition for the extension of the measure of restraint, the prosecution incorrectly cited the decisions of the ECtHR and did not in any way connect such citation with its arguments. For example, at one of the sessions, the prosecutor referred to § 58 of the ECtHR Judgment in the “Bekchiev v. Moldova” case, stating that

⁶³See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 02/12/2020)

⁶⁴See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 04/08/2020)

⁶⁵See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 07/28/2020)

the risk of escape is assessed in the context of factors related to character, morality, place of residence, occupation, property status, family ties and all kinds of connections in the country. However, in the same judgment and in the same paragraph, the ECtHR indicated that the expectation of a harsh sentence and the weight of evidence may be appropriate, but they are not decisive, and the possibility of obtaining guarantees can be used to compensate for any risk⁶⁶.

During the monitoring of A. Tatarintsev’s case, it was noted that the court ignored the ECtHR practice to which the lawyers referred, namely, when the defense filed a motion to change the measure of restraint for the accused, the court refused to satisfy it, not taking into account the aforementioned paragraphs of the ECtHR decisions⁶⁷.

Observers of the ISHR have repeatedly faced similar situations in the cases of N. Kulish^{68,69,70,71}, S. Sorokin and V. Sorokin^{72,73}, I. Popovskaya⁷⁴, where observers recorded the complete disregard of the ECtHR practice, to which the defense was referring.

Ignoring the practice of the ECtHR was also recorded in the cases of Nazar Dubensky, Dmitry Kurylenko and Igor Ignatov.

According to Article 46 of the European Convention, the states that have signed it have undertaken to comply with the final judgments of the ECtHR in any case to which they are parties. According to the Commissioner for

⁶⁶See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 06/02/2020)

⁶⁷See Monitoring of the case of Andrey Tatarintsev (hearing 09/03/2020)

⁶⁸See Monitoring of the case of Natalya Igorevna Kulish (hearing 02/17/2020)

⁶⁹See Monitoring of the case of Natalya Igorevna Kulish (hearing 03/06/2020)

⁷⁰See Monitoring of the case of Natalya Igorevna Kulish (hearing 03/26/2020)

⁷¹See Monitoring of the case of Natalya Igorevna Kulish (hearing 05/21/2020)

⁷²See Monitoring of the case of Sergei Vladimirovich Sorokin, Vladimir Viktorovich Sorokin (hearing 04/30/2020)

⁷³See Monitoring of the case of Sergei Vladimirovich Sorokin, Vladimir Viktorovich Sorokin (hearing 06/22/2020)

⁷⁴See Monitoring of the case of Popovskaya Inna Petrovna (hearing 06/24/2020)

Human Rights of the Council of Europe Nil Muijniaks, the credibility and effectiveness of the human rights protection system based on the European Convention is violated when the state authorities do not fully implement the judgments of the ECtHR. And the prolonged non-execution of judgments of the ECtHR is a challenge to the authority of the court itself and, as a result, to the entire legal system based on the European Convention⁷⁵.

The main task of the compulsory application of the practice of the ECtHR is assigned by the Ukrainian state to the national courts (Law of Ukraine “On the use of decisions and the application of the practice of the European Court of Human Rights”), indicating that the courts are obliged to apply the European Convention and the practice of the ECtHR as a source of law when considering cases (Article 17).

Despite this, the ECtHR reiterates that it is the state that has the duty to ensure that the final decisions made against its state-owned or state-controlled bodies, institutions or enterprises are carried out in accordance with the specified requirements of the European Convention. The state is responsible for the implementation of final decisions if the factors that delay or impede their full and timely implementation are within the control of the authorities (“Smirnov v. Ukraine”, paragraph 54).

Moreover, in the judgment in the case of “TOV Basalt-Impex v. Ukraine” (paragraphs 22-26), the ECtHR expresses its concern that, despite the clear provisions of Article 17 of the Law of Ukraine on human rights the Supreme Court of Ukraine ignored the findings of the ECtHR, set out in the decision in another case – “Sokurenko and Strygun v. Ukraine”, which at the time of the applicant’s case had already been translated into Ukrainian and published in the official legal publication. Thus, the ECtHR stated that it sees no reasons that would justify the departure of the national court from the previous case-law of the ECtHR, when the

factual and legal circumstances are identical to the circumstances already considered by the ECtHR earlier in judgments in other cases.

1.4 Violation of the right to defense

The principle of a fair trial includes, among other things, the right to defense. This right is guaranteed both by domestic law and by international law. It should be referred to as fundamental right, in particular in criminal proceedings.

Observers often noted that the suspects/accused and their defenders were not provided with case materials for review, which is a direct violation of the right to defense, for example, this situation was observed in the case of the murder of journalist P. Sheremet⁷⁶. In the case of General of the SBU A. Schegolev, the defense lawyer argued that he could not get acquainted with the documents that were evidence of the defendant’s innocence, despite the fact that he had access to obtain state secrets, which he received from the authorized bodies⁷⁷. Also, during the monitoring of the case of A. Melnik and others, a situation was repeatedly observed when lawyers filed petitions and asked the court to oblige the prosecutor’s office to provide them with a lot of important evidence for the case, but the court did not satisfy any of them⁷⁸.

Repeatedly, the court, passed an unmotivated decision, and refused to satisfy various kinds of motions of the defense, while the prosecution’s motions were accepted. This was noted, for example, in the case of A. Kitaev, during the entire trial, the court did not satisfy a single motion of the defense, while all the motions of the prosecution were accepted by the court⁷⁹. In the case of A. Melnik, it should be noted that the violation of the right

⁷⁵See <https://www.coe.int/ru/web/commissioner/-/non-implementation-of-the-court-s-judgments-our-shared-responsibility>

⁷⁶See Pre-trial investigation in the Sheremet case (court hearings in February 2020)

⁷⁷See Monitoring of the case of Alexander Shchegolev (hearing 08/18/2020)

⁷⁸See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 09/15/2020)

⁷⁹See Monitoring of the case of Anton Kitaev (hearing on 08/19/2020)

to defense also took place when the prosecution admitted evidence of unknown origin and to the defense lawyers' objections regarding their inadmissibility, impossibility of investigation due to the fact that they were not open to the defense the panel of judges refused to satisfy the request without reasoning the decision^{80,81,82}. A gross violation in the same case was noted when the defense wanted to attach to the case file evidence that points to a different version of the events of the murder, different from the one provided by the prosecution, but the court did not admit all the evidence to the case because the documents are not adequate evidence, that is, such that do not relate to this criminal proceeding. Let us remind once again about the Resolution of the Supreme Court of January 21, 2020 in case No. 754/17019/17, which states that the existence of a different version of events is the basis for reasonable doubt in the proof of guilt^{83,84}.

In the case of A. Lesik, during the court's examination of the video file, it was clearly audible how the SBU officers obstructed the defendant's attempt to leave the building, because he refused to sign some documents⁸⁵. A similar situation took place in the case of Y. Rossoshanskiy, where during the examination of the protocol and the video recording of the interrogation, the defense attorney drew attention to the fact that during this procedural action the lawyer of the Center for Free Secondary Legal Aid (who was obliged to come to defend the suspect) was absent. According to Part 1 of Art. 52 of the Criminal Procedure Code of Ukraine, the participation of a defense attorney is mandatory in criminal proceedings in respect of especially grave crimes. Also, the

lawyer of Y. Rossoshanskiy pointed out that in this proceeding, manipulations with the polygraph were carried out twice, but this information is absent in the case materials, which again violates the right to defense⁸⁶.

One of the types of violation of the right to defense is the involvement of defense lawyers from the Regional Center for Free Secondary Legal Aid, despite the fact that the accused/suspects had a lawyer under the contract. For example, in the case of E. Anisimov, where, due to quarantine measures, his lawyer was not able to come to another city for a hearing, having submitted a request in advance, the court concluded that it was advisable to involve a "public defender", despite the fact that the accused was strongly against such actions^{87,88}. In the case of A. Filtsev, the observers noted that the court decided to appoint a lawyer for Alexander Filtsev from the Center for the provision of free secondary legal aid – V. Bashchuk, against the wishes of the accused himself, despite the fact that A. Filtsev also had contractual defenders who could not arrive from another city to the court due to the fact that the court notified the lawyers of the planned session only three hours before its start⁸⁹. Such actions of the court directly violate Art. 59 of the Constitution of Ukraine, which provides that everyone has the right to legal assistance and to choose a defender of his rights.

According to Article 6 § 3 (c) of the European Convention, anyone charged with a criminal offense has the right to defend himself in person or through legal assistance of his own choosing. The ECtHR insists that the right of everyone charged with a criminal offense to the effective defense by a lawyer is one of the fundamental characteristics of a fair trial ("Hanzewacki v. Croatia", § 21). In order for

⁸⁰See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearings 08/11/2020, 08/12/2020, 08/13/2020)

⁸¹See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 05/21/2020)

⁸²See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 03/12/2020)

⁸³See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 06/24/2020)

⁸⁴See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing on 07/21/2020)

⁸⁵See Monitoring of the case of Andrey Lesik (hearing 01/30/2020)

⁸⁶See Monitoring of the case of Yuri Rossoshanskiy (hearing 06/03/2020)

⁸⁷See Monitoring of the case of Anisimov E.A. and others (hearing 04/16/2020)

⁸⁸See Monitoring of the case of Anisimov E., Grechkovsky A., Bondarenko E. (hearing 05/18/2020)

⁸⁹See Monitoring of the case of Alexander Filtsev (hearings 07/22/2020, 07/23/2020)

the right to a fair trial to remain sufficiently “practical and effective”, Article 6 § 1 requires that access to a lawyer be provided from the moment a suspect is first questioned by the police, unless, in the light of the particular circumstances of each case, compelling reasons for restrictions on this right (“Colu v. Turkey”, § 51, “Dayanan v. Turkey”, §§ 31-32, “Pischalnikov v. Russia”, § 67). Nevertheless, according to the ECtHR, the right to defense includes not only the right to receive legal assistance, but also the right to be present in person and, if necessary, to effective observation⁹⁰ of the proceeding. Such rights are implied in the very concept of adversarial procedure (“Lagerblom v. Sweden”, § 49).

The ECtHR has repeatedly pointed out in its decisions that the European Convention provides for the right of every person charged with a criminal offense to an effective defense of a lawyer, officially appointed if necessary, which is also one of the fundamental characteristics of a fair trial (“Galstyan v. Armenia”, § 89, “Salduz v. Turkey”, § 51, “Krombach v. France”, § 89, “Dayanan v. Turkey”, § 30). Since the European Convention is intended to guarantee not rights that are theoretical or illusory, but rights that are practical and effective, the appointment of a defense lawyer should ensure that the effective assistance he can provide to the accused is guaranteed. Moreover, the European Convention speaks specifically of “assistance” and not of “appointment”. It should be noted that the mere appointment of a lawyer by the state does not provide effective assistance, as a lawyer appointed for the purpose of legal assistance may shirk his duties. If the authorities are notified of the situation, they must either replace the defender or force him to fulfill his obligations (“Artico v. Italy”, § 33; “Siirak v. Russia”, § 27).

At the stage of judicial consideration of the case, a typical violation for Ukraine is the lack of an opportunity for the defense side to familiarize themselves with the proceedings, which may significantly violate the right to defense and the adversarial principle. The higher courts systematically review the decisions of

⁹⁰by the accused

the courts on the basis of such problems; nevertheless, the issue remains relevant.

As stipulated by the ECtHR decisions, in accordance with the principle of equality of arms, as one of the features of the broader concept of a fair trial, each party should be given a reasonable opportunity to present its case in conditions that do not put it at a disadvantage compared to its opponent (“Ruiz-Mateos v. Spain”, § 63). Denying the accused access to the case materials, especially when his interests are not represented by a lawyer, is a significant violation of the right to a fair trial, due to the violation of the principle of equality of arms and the restriction of the right to defense that it entailed (“Mahfi v. France”, § 26; “Fouche v. France”, §§ 27, 34).

The ECtHR recalls that Article 6 paragraph 3 (b) of the European Convention also guarantees the accused “sufficient time and facilities to prepare his defense” and therefore assumes that the notion of defense on his behalf may contain everything that is “necessary” to prepare for the main hearing (“Galstyan v. Armenia”, § 88). The accused must be able to properly organize his defense, without limiting the ability to present all relevant defense arguments in court and thus influence the outcome of the trial. In addition, the rights attributable to all who have been charged with a criminal offense should include the opportunity to familiarize themselves, in order to prepare their defense, with the results of the investigation carried out throughout the proceedings. The issue of the adequacy of the time and opportunity provided to the accused must be assessed in the light of the circumstances of each particular case (“Tarasov v. Ukraine”, § 88).

1.5 Automatic prolongation of detention

This violation first manifested itself on a large enough scale to speak of a negative trend in 2020. Observers, independently of each other, recorded it in various trials.

In most criminal proceedings, the prosecution’s justification for the need to extend the measure of restraint in each petition in a spe-

cific case was limited only by the risks provided for in Art. 177 of the Criminal Procedure Code of Ukraine. At the same time, new circumstances, supported by evidence, were not named. These formal risks include:

1. the risk of escaping from the authorities of the pre-trial investigation and/or the court;
2. destruction of evidence;
3. illegal influence on the victim, witness, other suspect, accused;
4. illegal influence on an expert, specialist in the same criminal proceedings;
5. impeding criminal proceedings in a different way;
6. commission of another criminal offense or continuation of a criminal offense in which a person is suspected.

In particular, this was noted by observers in the case of I. Lozinsky and others, where the same risks were declared in relation to all the accused, and there were four of them^{91,92}, also in the case of R. Dubinevich⁹³, in the case of G. Radutny⁹⁴ and other cases⁹⁵. In the case of N. Kulish, the court in its ruling did not name any arguments for extending the period of detention, but the prosecutor's motion was granted⁹⁶.

The prosecutor's office often argued its position solely by the gravity of the charge. For example, in the case of V. Tyapkin⁹⁷, in the

case of S. Kozak and others, in the case of I. Bliznyuk and others⁹⁸. In the case of R. Dubinevich, the court decision, in which the measure of restraint was extended, used the following facts: accusation of an especially grave crime, the possibility of illegal influence by the accused on witnesses and victims in the case. Such arguments were used in the first court decision on the extension of detention and remained unchanged for one year⁹⁹.

The situation in which the prosecution petitioned for an extension of the measure of restraint, while duplicating the previously named risks and not supporting them with new evidence, was observed in the cases of A. Volkov¹⁰⁰, Yu. Rossoshanskiy¹⁰¹, I. Shurman¹⁰², I. Bliznyuk and others¹⁰³, and also repeatedly noted in the case of V. Tyapkin^{104,105}.

Also, in the case of I. Bliznyuk and others, during the consideration of the issue of extending the measure of restraint, the court indicated that the actual circumstances of the crimes incriminated to the accused, which testify to their increased public danger, together with the severity of the possible punishment and information about their personality, refute the arguments of the defense on the lack of evidence and groundlessness of the risks provided for by Part 1 of Art. 177 of the Criminal Procedure Code of Ukraine¹⁰⁶.

During the monitoring of the case of S. Atroshchenko and other observers noted that the court initiated consideration of the issue of

⁹¹See Monitoring the case of Igor Lozinsky, Evgeny Koshevarov, Vadim Piven, Roman Zatzvorskyy (hearing 04/10/2020)

⁹²See Monitoring of the case of Igor Lozinsky, Evgeny Koshevarov, Vadim Piven, Roman Zatzvorskyy (hearing 05/28/2020)

⁹³See Monitoring of the case of Roman Dubinevich (hearing 05/12/2020)

⁹⁴See Monitoring of the case of Grigory Radutny, Vitaly Gonchar, Sergei Shmorgun (hearing 04/01/2020)

⁹⁵See Monitoring of the case of S. Kozak, V. Mitkalik, M. Gumenyuk, A. Gurko (hearing 04/24/2020)

⁹⁶See Monitoring of the case of Natalya Kulish (hearing 05/21/2020)

⁹⁷See Monitoring of the case of Tyapkin V. (hearing 04/01/2020)

⁹⁸See Monitoring of the case of Bliznyuk I., Golovkin A., Khlapovsky Yu. (hearing 07/02/2020)

⁹⁹See Monitoring of the case of Roman Dubinevich (hearing 12/22/2020)

¹⁰⁰See Monitoring of the case of Alexander Volkov (hearing 04/03/2020)

¹⁰¹See Monitoring of the case of Yuri Rossoshanskiy (hearing 10/22/2020)

¹⁰²See Monitoring of the case of Ivan Shurman (hearing 11/03/2020)

¹⁰³See Monitoring of the case of I.A. Bliznyuk, A.O. Golovkin, Yu.M. Khlapovsky (hearing 12/02/2020)

¹⁰⁴See Monitoring of the case of Valentin Tyapkin (hearing 07/16/2020)

¹⁰⁵See Monitoring of the case of Valentin Tyapkin (hearing 11/27/2020)

¹⁰⁶See Monitoring of the case of Bliznyuk I.A., Golovkin A.O., Khlapovsky Yu.M. (hearing 08/10/2020)

extending the measures of restraint due to the planned leave of judges, despite the fact that at that time the issue of extension was considered only a month ago. The position of the court remained unchanged. The court, without substantiating, referred to the fact that the risks had not disappeared and continued to exist¹⁰⁷. Also, the premature filing of a petition for an extension of a measure of restraint was noted in the case of M. Voitenko and others, in addition, new circumstances that would have made it necessary to extend the detention were absent¹⁰⁸.

In the case of A. Melnik, A. Kryzhanovsky, I. Kunik, the experts of the ISHR noted the fact that the application for an extension of the measure of restraint was motivated by circumstances not provided for by law, namely, the prosecutor argued that the position of A. Kryzhanovsky's defense had been agreed with the other accused and had signs of "procedural sabotage". The court, in turn, did not assess this, which may indicate that the court agree with the accusation of "procedural sabotage" on the part of the lawyers. At the same time, there is a well-founded fear that this proceeding does not fulfill the task of the criminal proceeding in the context of ensuring the rights, freedoms and legitimate interests of the participants in the proceeding, including in terms of substantiation of the grounds provided for by the CPC for extending the detention^{109,110}.

Within the meaning of Article 5 of the European Convention, despite the right to liberty and security, a person may be deprived of his or hers liberty in cases specified by law, incl. in the case of lawful arrest or detention made for the purpose of bringing the person in front of the competent authority on reasonable suspicion of having committed an offense or where there are reasonable grounds to believe that it

is necessary to prevent him from committing an offense or to prevent him from absconding after it has been committed (Article 5 § 1 (c)). Nevertheless, according to paragraph 3 of the same article, every detainee or prisoner has the right to be released pending trial, subject to the guarantee of his appearance in court.

The ECtHR, based in its decisions on the European Convention, indicates that in order for a deprivation of liberty not to be considered arbitrary in the meaning of paragraph 1 of Article 5, the mere fact that this measure is applied in accordance with national legislation is not enough, it must be necessary in given circumstances. And the justification for any period of imprisonment – no matter how short it is – must be convincingly proven by the state authorities ("Nikolova v. Bulgaria", § 58, "Tymoshenko v. Ukraine", §§ 265-266, "Korban v. Ukraine", § 137, "Boychenko v. Moldova" §§ 142-144). The reasons that were considered "relevant" and "sufficient" reasons (other than reasonable suspicion) in the case-law of the ECtHR, included reasons such as the danger of escape, the danger of pressure on witnesses or the possibility of distortion of evidence, the risk of collusion, the risk of re-committing a crime, the risk of public disorder and the need to protect the prisoner ("Buzadzhi v. Republic of Moldova", § 88, § 57).

The ECtHR has repeatedly faced a situation where the national court in the first order to detain a person pointed out the seriousness of the charges against this person and the risk of his evasion from the investigation. In the future, prosecutors and courts, extending the period of detention, often do not provide reasons for their decisions, but only refer to the compliance of the previously chosen measure of restraint. In its decisions, the ECtHR insists that restrictions by the court by a simple statement that the previously appointed measure of restraint was correct throughout the entire period under review is not enough. According to paragraph 3 of Article 5, after a certain period of time, the mere existence of reasonable suspicion ceases to be a basis for deprivation of liberty and the judicial authorities are obliged to provide other grounds for continued deten-

¹⁰⁷See Monitoring of the case of Atroshchenko S. P., Zolotareva A. V., Kobaka I. V. (hearing 03/13/2020)

¹⁰⁸See Monitoring of the case of Voitenko M.S., Plavak A.D., Kosolapy A.P., Bogaychuk R.V., Sidoruk V.M. (hearing 11/20/2020)

¹⁰⁹See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 04/09/2020)

¹¹⁰See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 11/19/2020)

tion. In addition, such grounds must be clearly indicated by the national courts (“Buzadzhi v. Moldova”, § 122, “Borisenko v. Ukraine”, § 50, “Labita v. Italy”, § 153, “Kharchenko v. Ukraine”, §§ 80-81, “Baryshevsky v. Ukraine” §§ 67-68). The risk of an accused absconding must be assessed by reference to a number of other relevant factors that can either confirm the existence of the risk of escape or make it so insignificant that it cannot justify pre-trial detention (“Bekchiev v. Moldova” § 58). Since, if the needs of the investigation are mentioned only in a general and abstract form, they are not sufficient to justify the continuation of the detention (“Clout v. Belgium”, § 44).

Longer detention can also be justified on a case-by-case basis only if there are concrete indications of a genuine need to safeguard the interests of society, which, despite the presumption of innocence, outweigh the principle of respect for individual freedom (“Kudla v. Poland”, § 114).

The ECtHR also emphasizes that, in accordance with paragraph 3 of Article 5 of the European Convention, the authorities, when deciding whether to release a person or to detain him, are obliged to consider alternative measures to ensure his appearance in court. Indeed, this provision not only proclaims the right to “trial within a reasonable time or to release pending trial”, but also states that “release may be conditional on guarantees of appearance in court” (“Yarzinsky v. Poland”, § 44).

In addition, according to the ECtHR, arrested or detained persons have the right to review the procedural and substantive conditions that are necessary for the “lawfulness” of their deprivation of liberty (from the point of view of the European Convention). And although Article 5 § 4 of the Convention does not oblige the judge considering an appeal against detention to consider all the arguments contained in the arguments of the person making the complaint, its guarantees would be devoid of meaning if the court, relying on national law and practice, can consider irrelevant or ignore specific facts referred to by the detainee and which may call into question the existence of

conditions necessary for the “lawfulness” of the deprivation of liberty according to the European convention (“Nikolova v. Bulgaria” §§ 58, 61).

The lack of proper argumentation for extending the term of detention is a common problem in the entire judicial system of Ukraine. If the risks do continue to exist, the measure of restraint of the accused should be extended, however, both the accused and the public (whose interests are often referred to by the court in its decisions) have the right not only to clearly understand what specific risks are in question, but also to assess the validity of these risks. The issue of extending the measure of restraint should be considered on the basis of the individual situation in each case, and they should be reflected in the court decision. However, as a rule, we see only general statements moving from case to case, from one court decision to another court decision. Representatives of the ISHR are concerned about the attitude of the prosecutor’s office to the extension of detention periods, the prosecution’s petitions often lack references to the facts of the case itself, and the arguments are limited to general wording.

1.6 Other violations

In addition to the tendencies listed above, during the monitoring period, the ISHR observers also encountered other violations of the right to a fair trial. And although the number of similar violations¹¹¹, recorded by us, does not allow us to speak with confidence about the presence of trends (except for those indicated earlier), nevertheless, the total number of violations not included in the list of major negative trends is almost 30% of the total number of violations recorded by observers in 2020.

Among such violations, the most common were:

1. Torture and degrading treatment
2. Ignoring court decisions
3. Placing the burden of proof on defense

¹¹¹As well as the total number of cases in which these violations were recorded

4. Pressure on the court
5. Pressure on lawyers

This list includes only those violations that the observers have encountered on several occasions. For example, cases of ignoring court decisions, as well as torture and degrading human dignity treatment took place in more than 10% of the monitored proceedings.

If we talk about the cases in which the observers recorded these groups of violations, then torture and degrading human dignity treatment were observed in the cases of A. Melnik and others^{112,113}, N. Kulish¹¹⁴, A. Tatarintsev^{115,116,117}, V. Tyapkin¹¹⁸, N. Shapoval¹¹⁹.

Pressure on lawyers was noted in the case on the purchase of diesel fuel from the Joint Stock Company “Ukrainian Railways”¹²⁰.

Pressure on the court – in the cases of O. Tatarov¹²¹, P. Poroshenko¹²², G. Kernes¹²³.

Imposition of the burden of proof on defense – in the cases of A. Chibirdin¹²⁴, A. Miller and others¹²⁵, N. Kulish¹²⁶, V. Manger and A.

¹¹²See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 02/12/20)

¹¹³See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 05/21/20)

¹¹⁴See Monitoring of the case of Natalya Kulish (hearing 03/26/2020)

¹¹⁵See Monitoring of the case of Andrey Tatarintsev (hearing 03/20/2020)

¹¹⁶See Monitoring of the case of Andrey Tatarintsev (hearing 04/30/2020)

¹¹⁷See Monitoring of the case of Andrey Tatarintsev (hearing 06/10/2020)

¹¹⁸See Monitoring of the case of Tyapkin V.I. (hearing 04/01/2020)

¹¹⁹See Monitoring of the case of N. Shapoval (hearing 04/27/2020)

¹²⁰See Monitoring the case on the purchase of diesel fuel from the Joint Stock Company “Ukrainian Railways” (hearing 07/27/2020)

¹²¹See Monitoring of the case of Oleg Tatarov (hearing 12/28/2020)

¹²²See Monitoring of the case of Petr Poroshenko (hearing 07/08/20)

¹²³See Monitoring of the case of G.A. Kernes, V.D. Blinnik, E.N. Smithsky (hearing 02/28/2020)

¹²⁴See Monitoring of the case of A. Chibirin (hearing 01/30/2020)

¹²⁵See Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 02/12/2020)

¹²⁶See Monitoring the case of Natalya Kulish (hearing 03/26/2020)

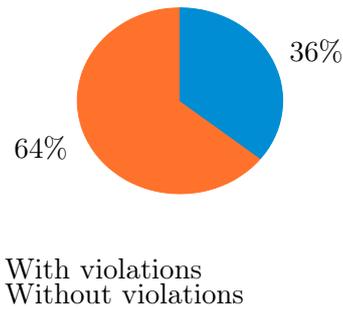


Figure 1.1: Percentage of hearings based on violations of legal proceedings.

Levin¹²⁷.

It is worth noting that these violations were recorded by the ISHR observers in both 2018 and 2019, which may indicate the “stability of the use” of such abuses. However, the absence of the aforementioned violations in the list of the main negative trends (see p. 11)¹²⁸ may indicate the presence of positive changes, which will be discussed below.

1.7 Positive trends

In addition to negative trends, in the course of monitoring, the ISHR observers recorded a number of positive changes.

On the positive side, half¹²⁹ of the negative trends identified in 2018 are missing from the lists of major trends for 2019 and 2020. Recall that these trends include:

1. Blocking the participation of the accused and witnesses in the trial
2. Placing the burden of proof on defense
3. Pressure on lawyers
4. Pressure on the court
5. Ignoring court decisions

¹²⁷See Monitoring the case of V.N. Manger, A.A. Levin (hearing 08/28/2020)

¹²⁸Especially those violations that are not included in the list of major negative trends for the second year in a row

¹²⁹5 out of 10

Of course, isolated cases of violations from the above list are still recorded by observers. However, the number of violations identified and the number of cases in which they were identified do not allow us to speak about the presence of negative trends at the level of the entire judicial system. Some trends of past years, such as blocking the participation of accused and witnesses in the court, pressure on lawyers or on the court, were recorded only 1-3 times in the entire 2020.

In 2020, ISHR observers did not encounter the use of cages for detention of defendants in the courtroom, this can also be considered a positive change (although the use of glass boxes is still taking place). The refusal of such measures of detention in the courtroom has been observed for the third year in a row.

It is worth noting that during the difficult time of the coronavirus pandemic and related quarantine measures, some courts conducted official video broadcasts of court hearings to implement the principles of publicity of the trial. Often, the courts not only independently decided which hearings to broadcast, but also satisfied the requests of the ISHR to broadcast the hearings of interest to observers. Such measures look especially positive against the background of the situation in the courts of some post-Soviet countries and Western Europe¹³⁰, where video broadcasts are not carried out at all or only the sessions of high profile trials are broadcasted.

1.8 Conclusions

In its annual reports, the International Society for Human Rights, in addition to simply recording violations, tries to identify their causes, as well as the reasons for positive changes in the judicial system of Ukraine. In our opinion, compared to 2019, the situation has deteriorated in many ways. One of the major reasons for that is the coronavirus pandemic and the introduction of quarantine measures. This factor, first of all, influenced the violation of the principle of reasonable time limits for legal proceedings and the automatic extension of the measure

¹³⁰For example, Armenia and France

of restraint. The judicial collegiums could not meet in full, attorneys and prosecutors were unable to attend court sessions held in other cities¹³¹. At the same time, the courts were able to extend the measure of restraint without gathering the entire collegium, but only by the decision of the presiding judge.

We have already noted above that some courts have tried to reduce the negative impact of the pandemic on their work. For example, by broadcasting court hearings, setting up hearings in the format of videoconferences, when the parties were able to participate in the proceeding remotely. However, it appears that the judicial system as a whole has used quarantine measures as an excuse to reduce the level of publicity of legal proceedings.

Unfortunately, the problem of the acute shortage of judges, which the ISHR wrote about in the 2019 report, has not yet been resolved. It is still observed practically all over the country¹³². Undoubtedly, this circumstance is one of the factors of numerous violations of the principle of reasonableness of the timing of the trial. Judges are physically unable to promptly consider incoming cases. An obvious step towards solving this problem is to increase the number of judges or at least bring the number of acting judges up to the norm established by law. In our opinion¹³³, the issue of solving this problem today does not depend on the “technical” readiness of the judicial system, but on political factors. The next round of political struggle prevents overcoming violations of the principle of reasonableness of the timing of the trial.

The political factor in the judicial sphere is present not only in the issue of appointing new judges. In 2020, an open confrontation between the President of Ukraine and the Constitutional Court of Ukraine began, after the

¹³¹It is not uncommon for the parties to reside in the different city from the one the trial is taking place in

¹³²The experts of the ISHR have repeatedly heard about the problems with the shortage of acting judges during the meetings held within the framework of the project

¹³³Which was formed after the participation of the ISHR experts in a broad discussion of the situation

President, by his decree, canceled one of the decisions of the Constitutional Court. Such situations¹³⁴ indicate that the country has serious problems with the implementation of the principle of separation of powers and the independence of the judiciary.

Unfortunately, in 2020, the previously outlined trend towards an increase in the number of court sessions at which no violations of the right to a fair trial were detected¹³⁵ did not

¹³⁴Which also include numerous incidents of a smaller scale

¹³⁵In 2019, in 40% of hearings attended by ISHR observers, no violations were recorded

¹³⁶In the report for 2018 the list of negative trends consisted of 10 items, and in the 2019 report it decreased to 4

¹³⁷We are talking about the total number of violations detected

receive further development. On the contrary, the situation has worsened, see fig. 1.1.

2020 also became the year when the trend towards a decrease in the number of major negative trends¹³⁶ was replaced by growth. The total number of major negative trends increased from 4 to 5.

In conclusion, it should be noted that the emerging picture of the overall deterioration of the situation is not as unambiguous as it might seem upon a cursory acquaintance with the figures obtained in 2020¹³⁷. In part, this picture emerges due to the very bad situation that has developed in just a few cases. This will be discussed in the analysis of statistical data.

2 Analysis of statistics

In this part of the report, we will acquaint readers in more detail with the results of the collection of statistical data, which was carried out by the ISHR observers during the monitoring of trials in 2020. All results are based on data from special questionnaires filled in by observers after each attended court session.

2.1 The special situation in the cases of A. Tatarintsev and A. Melnik

Before proceeding to the examination of statistical data, it is necessary to stipulate the situation that has developed in two criminal proceedings – in the case of the head of the “Visit” TV company Aleksandr Melnik, and in the case of the Donetsk businessman Andrey Tatarintsev. The peculiarity of these proceedings is that they account for almost half of the violations identified by the observers of the ISHR in 2020 - 120 violations!

A. Melnik is charged with the murder of the mayor of the city of Kremenchuk, as well as the murder of a local judge. A. Tatarintsev is accused of creating a terrorist organization.

The ISHR monitored these proceedings in previous years, but such depressing results were revealed for the first time since monitoring the observance of the right to a fair trial. For example, in 2019, 11 violations were recorded in the case of A. Melnik¹, and in 2020, 68 violations of the right to a fair trial were identified. A similar situation takes place in the case of A. Tatarintsev.

The specifics of these proceedings suggests the presence of a “political” (or “elite”²) component in both cases. Although this specificity manifests itself in two proceedings in different ways. In the case of Aleksandr Melnik, significant participation of the regional authorities in the judicial proceeding is recorded (up to

¹This is still the largest number of violations identified by the ISHR observers in one case in 2019

²Talking about the active participation of representatives of local political elites in the trial

the official decisions of the local parliament – the Poltava Regional Council, regarding what is happening in court). In turn, Andrei Tatarintsev is accused of creating a terrorist organization. This charge is related to the armed conflict in the east of Ukraine. It is also included in the list of articles of the Criminal Code, charges on which the ISHR traditionally classifies in its reports as trials with a political component.

It was these two cases that led to a significant increase in the total number of reported violations in 2020. Moreover, the number of violations in these proceedings is 5-7 times³ exceeds the number of violations identified in any other case, which was monitored in 2019-2020.

On the one hand, such “anomalous” indicators (in comparison with the data obtained during the monitoring of about a hundred trials conducted by the ISHR observers in 2019-2020) should certainly become a reason for close attention from authorities and civil society, both nationally and internationally. On the other hand, the direct inclusion of these cases in some parts of the statistical analysis (without changing the approaches to the formation of graphs and tables) will significantly distort the overall picture and prevent the identification of potential problems inherent not in individual proceedings, but in the judicial system as a whole.

2.2 Publicity of court hearings

From the point of view of exercising the right to publicity of the trial, the data on the presence of representatives of international organizations, such as the OSCE and the UN, as well as Ukrainian media and public organizations, are of interest. 16 cases of the presence of representatives of these institutions at court sessions were recorded, which is about 10% of the total number of monitoring carried out by the ISHR (see Fig. 2.1). These indicators are

³At least

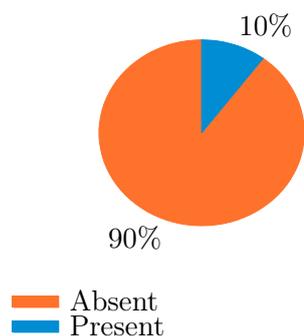


Figure 2.1: The presence of international organizations and the media at court hearings.

significantly inferior to the indicators of 2019⁴, however, this situation is most likely caused by quarantine restrictions, and not by a decrease in the interest of the above institutions in court hearings.

As in 2019, the ISHR collected information regarding the publication of the place and time of the hearings on the official website of the judicial authority of Ukraine. The monitoring results showed that only in 2 out of 157 analyzed cases, information about the time of the forthcoming court hearing was not published on the website of the judicial authority. For comparison, in 2019, 15 times the information on the time of the hearing was not provided (while the total number of analyzed court sessions in 2020 increased).

2.3 Situation with observance of the right to a fair trial in Ukrainian courts

In 2020, ISHR observers monitored 157 court hearings in 49 courts in 14 regions of Ukraine. Such a scale of observations gives us the opportunity to try to analyze the courts of Ukraine⁵

⁴In 2019, 38 cases of the presence of representatives of these institutions at court sessions were recorded, which amounted to about a third of the total number of monitoring carried out by the ISHR

⁵Only regarding those courts in which the monitoring was carried out

and make up preliminary rating of courts based on the number of violations of the right to a fair trial recorded in these courts.

Before continuing the discussion of this topic, it should be emphasized that not all violations identified by the ISHR observers occur as a result of the actions (or inaction) of the court! The parties to the proceeding or even third parties (for example, the administration of the pre-trial detention center, civil activists, etc.) can also act as the subjects of violations. Our rating rather points to the “judicial” regions (rather than specific judicial institutions) in which violations were recorded.

When compiling the rating, we had to solve the following issues:

1. How to neutralize the influence of a large number of observations in a particular court on the total amount of violations identified in this court? After all, there is a high probability that the more observations were carried out in a particular court (i.e., the longer the total observation period), the more violations will be revealed. At the same time, in courts where only one session was observed, the likelihood of detecting a large number of violations decreases.
2. How correct is it to compare in the same rating a court in which only one observation was carried out with a court in which, for example, 17 observations were carried out⁶?

The answer to the first question was the use of the arithmetic mean of violations per session in each particular court. Thus, we were able to significantly reduce the overall spectrum of violations in the courts. Instead of a huge spectrum from 0 to 68 (as it would be if the total number of violations identified in each court for 2020 was indicated), we got a spectrum from 0 to 4.5. In our opinion, such a ratio of numbers shows the general picture of observations more correctly.

To address the second issue, we refused to compile a single rating of 49 courts, and di-

⁶Largest number of observations conducted by ISHR in one court

Violation of the principle of reasonable terms of the trial	36%
Inclusion in the evidentiary base of “doubtful” evidence	21%
Automatic prolongation of detention	18%
Incorrect use and/or disregard of the case-law of the ECtHR	17%
Violation of the right to defense	16%
Ignoring court decisions	13%
Torture and degrading treatment	11%
Other	11%
Placing the burden of proof on defense	7%
Pressure on the court	2%
Pressure on lawyers	1%
Blocking the participation of the accused and witnesses in the trial	0%

Table 2.1: The presence of the specified category of violations in relation to the total number of monitored hearings.

vided it into 4 groups, depending on the number of observations carried out in each court. Thus, we got the following groups:

Group “A”: courts in which a single observation was carried out – 23 courts;

Group “B”: courts in which 2 to 4 observations were carried out – 17 courts;

Group “C”: courts in which 5 to 9 observations were carried out – 4 courts;

Group “D”: courts in which 10 or more observations were carried out – 5 courts.

Now, having explained our position regarding the formation of the “rating”, let us consider the results obtained. In the **group “A”**, the range of violations ranged from 0 to 2. No violations were recorded in four courts:

1. Bogunsky District Court of the city of Zhitomir;
2. Lvovsky Regional Administrative Court;
3. Solomensky District Court of Kiev;
4. Khersonsky Court of Appeal.

The most violations (2 violations each) were recorded in four courts:

1. Artyomovskiy city district court of Donetsk region;

2. Zaporozhsky Court of Appeal;
3. Lubensky city district court of Poltava region;
4. Suworovsky District Court of Odessa.

In the **group “B”**, the range of violations ranged from 0 to 1.5. Not a single violation was recorded in only one court, and 0.5 violations were recorded in three more courts:

1. Shevchenkovsky District Court of Zaporozhye – 0 violations;
2. Zhytomyrsky District Court of Zhytomyr Region – 0.5 violations;
3. Kievsky Court of Appeal – 0.5 violations;
4. Poltavsky Court of Appeal – 0.5 violations.

Most violations (1.5 violations each) were recorded in three courts:

1. Kovelsky City District Court of the Volyn Region;
2. Leninsky District Court of the Zaporozhye Region;
3. Kharkovsky Court of Appeal.

In the **group “C”**, the range of violations ranged from 1.2 to 1.57 violations per hearing. Since there are only 4 courts in this group, we will indicate all of them:

1. Dneprovsky District Court of Kiev – 1.2 violations;
2. Pechersky District Court of Kiev – 1.4 violations;
3. Supreme Anti-Corruption Court of Ukraine – 1.5 violations;
4. Zheleznodorozhny District Court of Lvov – 1.57 violations.

In the **group “D”**, the range of violations ranged from 0.9 to 4.5 violations per hearing. Since there are only 5 courts in this group, we will indicate all of them:

1. Shevchenkivsky District Court of Kiev – 0.9 violations;
2. Lutsk city district court of the Volyn region – 1,0 violations;
3. Ordzhonikidzovskiy District Court of the city of Kharkov – 1.0 violations;
4. Gadyatsky district court of Poltava region – 4 violations;
5. Kuibyshevskiy District Court of the Zaporozhye Region – 4.5 violations.

Research in this direction is only at the initial stage, but the practical application of such a rating is very obvious – it, for example, will allow to concentrate the efforts of observers and other interested institutions on those “judicial regions” in which human rights violations occur most often.

2.4 Court hearings

As in 2019⁷, we have prepared a graph of the “Stages of consideration of the case” (see Fig. 2.2) indicating the type of court sessions that were monitored. Traditionally, in the total mass of court sessions attended by the ISHR observers in 2020, there were a large number of preparatory sessions (27%). The number of hearings held on the merits was 72%. Comparing the results with the data of previous years,

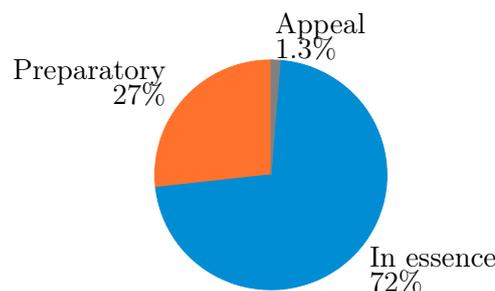


Figure 2.2: Stages of consideration of the case.

we see that in 2020 the situation has changed slightly.

The number of preparatory hearings attended by observers increased compared to 2019 (it was 20%) and almost equaled the figures for 2018 (it was 30%). The number of observations of hearings held in essence, remains unchanged for the second year in a row (in 2019 it was also 72%, and in 2018 – 64%). Such situation occurred because in 2020 the observers of the ISHR were less likely to monitor the appeal sessions.

It’s interesting to see the “performance” of all this mass of hearings. During the year, our observers tracked what specifically the court sessions were devoted to. As it turned out, only 39 sessions were devoted to the study of the case materials (for example, this is only 35% of all sessions⁸ held on the merits). Witnesses and victims were questioned only at 10 sessions (9% of all sessions held on the merits).

The most “popular topic” during the court hearings was the consideration of the question of a measure of restraint for the accused (election of a measure of restraint or its extension). 69 court sessions were entirely devoted only to questions of measures of restraint. This, for example, is 44% of all hearings (including those held on the merits, preparatory and appeal). In total, the issue of measures of restraint was considered at 74 hearings, i.e. only at 5 sessions (among those at which a measure of restraint

⁷See. “Report Right to a fair trial in Ukraine. 2019”.

⁸Of the total number of hearings that were monitored

was considered) other than the issue of a measure of restraint was considered.

What was the most popular measure of restraint? During the monitoring of the court sessions, the observers recorded⁹:

1. Detention in custody – 98 times;
2. Night house arrest – 15 times;
3. Personal obligation – 11 times;
4. 24-hour house arrest – 6 times;
5. Bail – 1 time;
6. No measure of restraint – 41 times.

During the monitoring period, the observers of the ISHR recorded changes in the measure of restraint only 8 times.

The above figures may indicate that the courts are much more likely to devote time to consideration of measures of restraint rather than studying the case materials and interrogating witnesses and victims. This, with a high degree of probability, is one of the reasons for the large number of violations of the principle of reasonable time limits. As already indicated in the first section of the report, violation of the principle of reasonable trial time is the most frequent violation recorded by the ISHR monitors.

2.5 Correlation of the number of detected violations with incriminated crimes

As in 2019, the statistical material collected during the monitoring of 2020 allows once again to check the widespread thesis that in cases with a “political component” more often¹⁰ violations of the right to a fair trial occur. Unlike media or political statements, often of a subjective nature, the numbers of violations recorded, the numbers of specific incriminated articles, etc. allow to get a fairly objective picture.

⁹The measure of restraint at the time of the court session

¹⁰In comparison with other criminal proceedings.

In our analysis, we divide all cases monitored into conditionally “political” and “other”. In our opinion, the most objective way for this is to group the cases depending on the article of the Criminal Code in the official charge¹¹. With this approach, cases involving accusations of crimes against the foundations of national security of Ukraine, public security and/or crimes against peace, security of humanity and international law¹², can be classified as “politically motivated”. During the monitoring we faced the following accusations from this group:

art. 109 of the Criminal Code actions aimed at the violent change or overthrow of the constitutional order or the seizure of state power;

art. 110 of the Criminal Code encroachment on the territorial integrity and inviolability of Ukraine;

art. 111 of the Criminal Code high treason;

art. 113 of the Criminal Code sabotage;

art. 161 of the Criminal Code violation of the equality of citizens depending on their race, nationality, religious beliefs, disability and other grounds;

art. 255 of the Criminal Code the creation of a criminal organization;

art. 258 of the Criminal Code terrorist act;

art. 258-3 of the Criminal Code the creation of a terrorist group or terrorist organization;

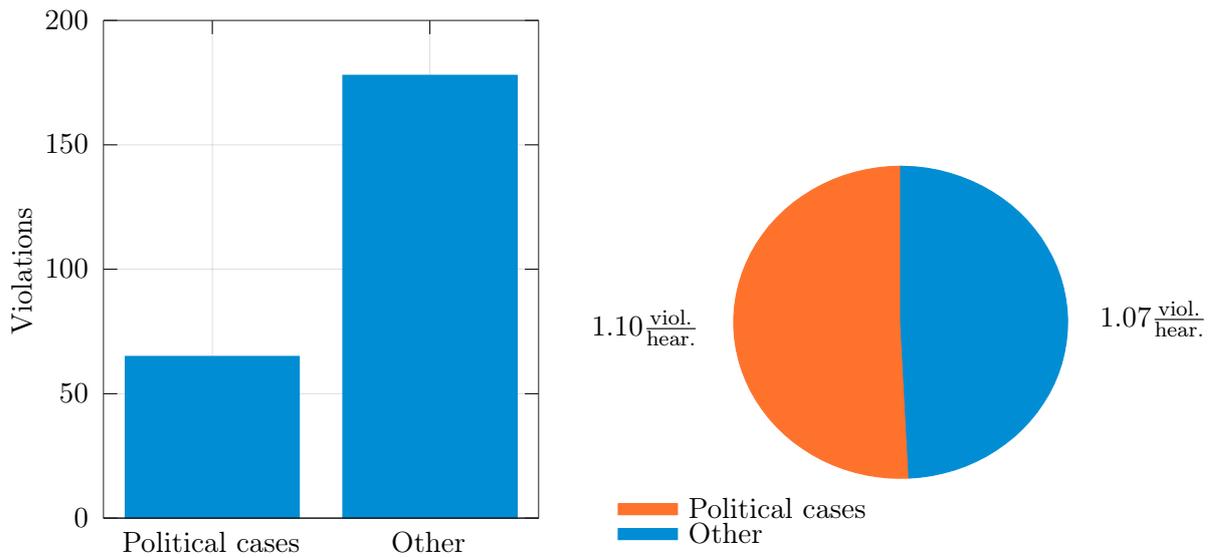
art. 258-5 of the Criminal Code financing of terrorism;

art. 263 of the Criminal Code illegal handling of weapons, ammunition or explosives;

art. 340 of the Criminal Code illegal obstruction of the organization or holding

¹¹Which provides clarifying information regarding imputed acts

¹²We use the terminology of the CC sections



(a) the total number of violations in each of the proceeding types.

(b) average number of violations per hearing.

Figure 2.3: Distribution of violations by type (political / other) litigation.

of meetings, rallies, processions and demonstrations;

art. 341 of the Criminal Code seizure of state or public buildings or structures;

art. 263 of the Criminal Code illegal handling of weapons, ammunition or explosives;

art. 365 of the Criminal Code abuse of power or official powers by a law enforcement officer;

art. 366 of the Criminal Code service forgery;

art. 437 of the Criminal Code planning, preparation, unleashing and conducting an aggressive war;

art. 438 of the Criminal Code violation of the laws and customs of war.

As a rule, accusations from this group are somehow connected with the events in the East of Ukraine, Crimea, or the confrontation on the Maidan in the winter of 2013-2014.

The rest of the charges were included in the second group of “other” cases.

It is important to note that some of the cases combine both charges from the “political” list and articles from the second group. We classified them as proceedings with a “political component”. In order to make the overall picture of the investigated proceedings clearer, we have prepared a table in which the charges and the number of violations recorded in each case are indicated (see table 2.6). “Political proceedings” are marked with an asterisk (*) in the table.

Having this data, we were able to prepare two graphs: the first one, which displays the total number of violations in each of the two groups of criminal proceedings; the second is the average number of violations per hearing in “political” and “other” proceedings (see fig. 2.3b). The second graph is needed to check if the results were influenced by some “anomalous” isolated cases (specific trials with a large number of violations) or the fact that we paid closer attention to some specific cases (or a group of cases).

As the graphs show, despite the fact that the total number of violations detected in “political cases” is less than in “other”, the average number of violations per hearing, on the other

hand, is slightly higher in “political cases” than in “other”. The difference in the indicators of the two graphs is explained by the fact that in 2020 the number of “other” cases monitored, significantly exceeded the number of “political cases” (13 cases versus 59 cases).

The results of the analysis of judicial monitoring show that, firstly, “political cases” still cannot be called “rare” or “isolated cases”. Secondly, the number of violations in “political cases” still exceeds the number of violations in other proceedings. Although the data obtained in 2020 indicates that this “excess” is negligible.

2.6 Equality of the parties

An important component of a fair trial is respect for the principle of equality of arms. In order to assess the situation in the trials, which were monitored by the ISHR, we analyzed the “attitude” of the courts towards the parties to the proceeding using the example of the court’s rulings on the satisfaction or refusal to satisfy the petitions of the parties. As a result, two graphs were prepared (see Fig. 2.4).

A total of 195 petitions were submitted by the parties. According to the results obtained, a little more than a third of the petitions of the defense (35%), recorded by the observers of the ISHR, were satisfied by the court. While 89% of the petitions from the prosecutor’s office were satisfied.

These data indicate that during the trial, the prosecution is approximately two and a half times more likely to receive a satisfactory court decision on their motions. Such a gap may indicate that there is a problem with the implementation of the principle of equality of arms in the courts of Ukraine. Moreover, in the 2019 report of the ISHR, when analyzing the ratio of satisfied requests for admission of new evidence, the gap between the satisfied requests of the defense and the prosecution was much smaller (only one and a half times: 46% versus 67%).

Considering the data collected by the ISHR in 2018, 2019 and 2020¹³, it can be assumed

¹³For all three years of observations, the prosecution’s

that the defense and the prosecution are not on an equal footing when the courts consider the parties’ motions.

Nevertheless, this ratio does not apply to all forms of interaction of courts with the parties to the proceeding. For example, during the admission of new evidence, the courts refused the defense (a total of 10 attempts to add evidence were recorded) and the prosecution (a total of 17 attempts to add evidence were recorded) an equal number of times - 2 times. Although, the ratio is still in favor of the prosecution: 2 out of 10 versus 2 out of 17.

2.7 Proceedings imbalance

In order to clearly show the presence of an imbalance in violations in litigation, we will use a criterion established in statistical analysis: the Lorentz curve.

To do this, we will sort all hearings according to the number of violations in them and construct a Lorentz curve. We will display it, along with the neutral line, in Fig. 2.5.

This curve is usually used to display the imbalance in the income of the population. For example, the more the Lorentz curve of the income of the population deviates from the neutral line, the greater the imbalance of those very incomes, in which case it is said that a small part of the population concentrates most of the money. In the ideally uniform case of income distribution, when everyone has the same income, the Lorentz curve coincides with the neutral line. So, in our case – the more the violation Lorentz curve deviates from the neutral line, the more unevenly the violations are distributed in hearings. This unevenness may be due to both the greater “bias” of the courts towards certain types of cases, and the temporary unevenness of violations. Temporary unevenness in the same case, means that violations are distributed unevenly across sessions.

Numerically, this unevenness is expressed by the Gini coefficient G , which is nothing more than the ratio of the area between the Lorentz

_____ motions were satisfied much more often than the defense motions

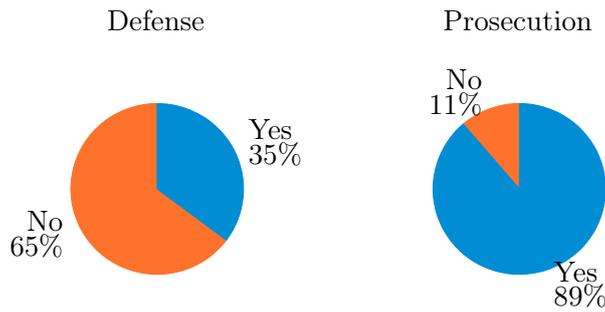


Figure 2.4: Ratio of approved petitions

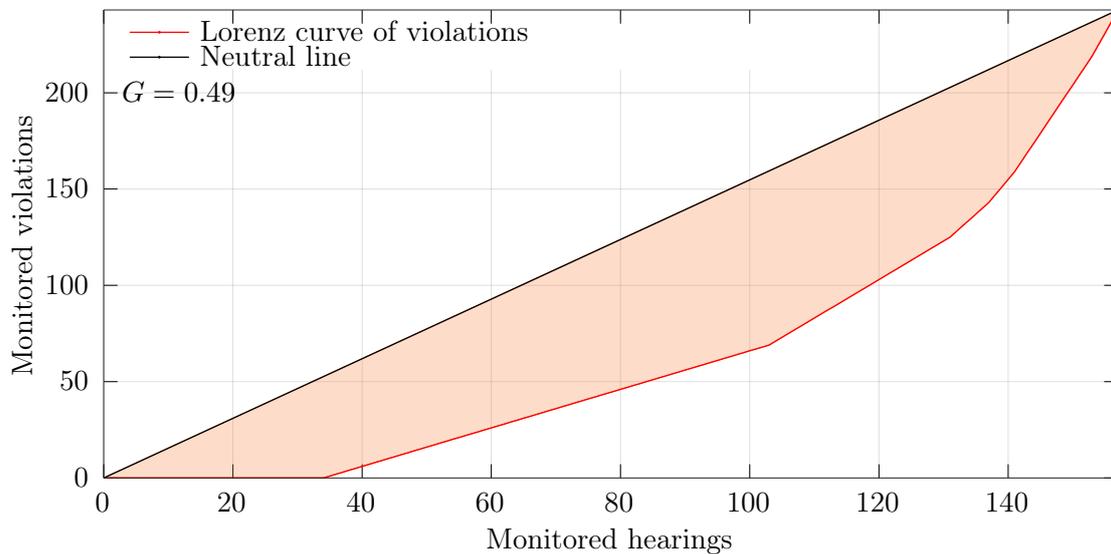


Figure 2.5: Lorenz curve of violations in hearings for 2020.

curve and the neutral line (the shaded area in Fig. 2.5) to the total area of the triangle composed of the neutral line and the edges of the graph. In the “ideal” case of a uniform distribution of violations between sessions, the Lorenz curve would coincide with the neutral line. Thus, the Gini coefficient of G would be 0. Conversely, if absolutely all violations were concentrated in one single hearing, the Gini coefficient G would be approximately equal to one. In our case, we have $G = 0.49$, which is a fairly large value. For comparison, the same value of the coefficient can be obtained if 50% of violations were concentrated in one percent

of hearings.

In this context, it should be noted that the approach of the Lorenz curve to the neutral line will not at all indicate that there are no violations. It will only state that the courts are *equally* bad/good in conducting hearings.

2.8 Relationship between the charge and the number of violations in the trial

In 2020, we continued to research to what extent each of the articles of the Criminal Code is related to the frequency of violations

of the right to a fair trial. Back in 2019, ISHR experts developed a special algorithm. The purpose of such a tool is to identify potentially “unfair” lawsuits as objectively as possible (if the articles of accusation in the proceedings in which violations occur most often are known) and more effectively direct efforts to prevent violations of the right to a fair trial.

The addition of the data collected in 2020 to the results of 2019 allows us to take the next step in the development of the algorithm, since the accuracy of the results obtained depends on the scope of litigation (the more trials, the more accurate the result).

What is our method? Each proceeding often includes different articles of accusation (see, for example, table 2.5). It is impossible to directly determine which accusation (article of the Criminal Code) most of all influences the deviation of court hearings from procedural norms¹⁴. However, assigning to each article of the Criminal Code s a certain coefficient of violations X_s , we can compose a system of equations. To do this, we assign to each case D_i a set of articles of the Criminal Code S_i that appear in it. Summing up for each case all the weights of the articles passing through it, we get the following system:

$$\left\{ \begin{array}{l} D_1 = \sum_{s \in S_1} X_s \\ D_2 = \sum_{s \in S_2} X_s \\ \dots \\ D_i = \sum_{s \in S_i} X_s \\ \dots \end{array} \right.$$

In the general case, such systems do not have exact solutions. However, assuming that no article can have a negative¹⁵ coefficient, that is, $X_s \geq 0$, we can find a solution that will give us the smallest error. Thus, we isolate the influence of each individual article on the

¹⁴The “norm” is a fair trial, in which there are no violations

¹⁵Not to be confused with a “negative” influence on the course of the hearing! In this case, a negative coefficient means a decrease in the number of violations

course of court hearings. The results of applying this methodology to the monitoring data of 2019 and 2020 are shown in Table 2.3.

This year, for the first time, we had the opportunity really analyze the operation of the algorithm¹⁶. To do this, we compared the data for 2019 (tab. 2.4) with data for 2019–2020 (tab. 2.3). But before proceeding to the analysis, we note that over the past year the algorithm has been optimized. If in 2019 the resulting coefficient was calculated from the absolute number of violations in each case, now the necessary coefficients are normalized according to the number of hearings in which they were recorded. Thus, possible deviations caused by increased attention of the observers to some proceedings are leveled. The table with data for 2019 differs from the similar table given in the 2019 report, as it has been recalculated taking into account the above change.

Firstly, by the end of 2020, the number of articles for which we have data increased from 37¹⁷ to 61. This not only expands the range of studied articles of the Criminal Code, but also has a positive effect on the calculation of the coefficient of each article, since the same articles appear in different cases and thus “interact” with other articles.

Secondly, an increase in the number of cases, articles and violations identified will stabilize the entire rating. This can be seen from the decrease in the spread of the violation rate: if in 2019 its spectrum covered values from 0 to 5, then in 2020 it decreased and now covers values from 0 to 3.73.

Now let’s consider the dynamics of changes in the rating of articles¹⁸. Many of the articles that were in the first lines of the ranking in 2019 fell significantly lower. This is primarily due to the fact that in 2019, many of these articles appeared in only one observed case, and by the end of 2020, the number of observed cases with charges under these articles

¹⁶Since 2019 was the first year of such a study, it was not possible to compare the results with the previous data. We could only make theoretical assumptions.

¹⁷Number of articles in 2019

¹⁸The place that each article occupied in the rating (table) in 2019 and now

increased, and these articles took a place in the ranking more consistent with their real situation. This happened, for example, with Art. 190. In 2019, it was in first place (with a coefficient of 5), but after the number of cases in which there is a charge under Art. 190 increased from 1 to 5, the article dropped to 6th place (with a coefficient of 1.31).

Even for those articles that did not appear in new cases and were present only in one trial, there has been a change in the coefficient since 2019. For example, this situation has developed with Art. 260 in case No. 93. This is due to the fact that other articles in this case (Articles 110 and 263) were encountered in new cases (which were monitored in 2020) and a change in their coefficient resulted in a change in the coefficient of Art. 260.

All this indicates that the article rating itself is dynamic, i.e. one that is constantly changing as new data arrives. While the 2020 changes may indicate that including enough data will lead to some kind of equilibrium, where the fluctuations in the violation rate of each article will not be as significant.

With regard to the applied use of the algorithm, at this stage, it can be assumed that if the coefficient of violations of an article of the Criminal Code exceeds 2 in one (or several) cases with charges under this article, there may be a large deviation from the norm, i.e. there are a large number of violations. For example, Art. 437 occurs only in case №№ 83 – 56 violations were recorded in this case over two years of observation. It ranks second in terms of the number of violations of all cases monitored¹⁹.

The algorithm is still under development and we hope that in 2021 we will be able to involve representatives of the scientific community and the judicial sphere in this work. This study is primarily aimed at developing a tool that allows, for example, to direct the efforts of the monitoring specifically to cases with an increased “potential for violations”.

2.9 Conclusions

The use of methods of statistics and mathematical analysis finds its application in such a field as litigation. They allow to check and, in certain cases, confirm logical conclusions, guesses and predict the further development of the situation with the help of objective inputs, which are data obtained by the observers of the ISHR during the monitoring of trials. It seems that this approach contributes to a more objective analysis of the situation (for both observers and participants in the trial). At a minimum, it provides an opportunity to raise a number of questions and, subsequently, can facilitate the process of strategy development and decision-making by the participants in the proceeding and the court.

ISHR experts continue to use and develop these methods when analyzing the results of monitoring the observance of the right to a fair trial in 2021. Such efforts will make it possible to more accurately identify the existing negative trends, to model the ways of their development, to establish the scale of damage inflicted on the judicial system and to contribute to the development of preventive measures.

¹⁹For a better understanding of the situation in the case, which is in third place, there are a total of 13 violations

Case	Articles	$\frac{\text{violations}}{\text{hearings}}$	Case	Articles	$\frac{\text{violations}}{\text{hearings}}$
83*	258-3, 437, 438	4.5	57	121, 365	1
53	115, 377	3.94	58*	110, 111, 161, 258-3	1
9	115	2	62	185	1
12	307	2	64	289	1
18*	258, 263, 342	2	67	187, 289	1
33	307, 309, 317	2	68	191	1
44	191, 209, 366	2	69	NA	1
60	ГИ	2	70	187	1
81	115, 190, 357, 358	2	71	115, 189, 263, 289	1
84	369	2	77*	191, 255, 258-3, 258-5, 366	1
92	187	2	78	186	1
94	115	2	80	368	1
42	149	1.83	85	187, 253, 263, 353	1
88	289	1.67	87	206-2, 358, 366	1
40	364	1.5	97	115	1
48	191, 366	1.5	3	115, 121, 340, 365	0.75
76	187	1.5	10*	109, 115, 121, 340, 365	0.75
79	187	1.33	72	115	0.75
7	121, 146, 189, 255, 263	1.29	5	115, 189, 191, 209, 255, 263, 263-1, 307	0.67
50	121	1.25	96*	110, 258-3	0.57
1	366	1	25*	110, 111, 258-3, 341	0.5
6	122, 189, 194, 263	1	36	115	0.5
13*	115, 127, 146, 255, 340	1	37	186, 190, 199	0.5
14*	110, 258-3	1	89	146, 190	0.5
17*	263	1	90	286	0.5
20	115, 194, 289	1	19	115	0
21	115	1	23	121	0
22	115	1	28	ГИ	0
27	191, 209	1	29	115, 187, 309	0
30	190, 209, 364-1	1	35*	110, 113, 258, 258-3, 263	0
31	127, 129, 146	1	39*	147, 258, 263, 348	0
41	368-2	1	49	289	0
43	286	1	56	115	0
46	342, 345	1	66	345	0
51*	111	1	82	115	0
55	191, 209, 358, 368, 369	1	98	307, 309	0

Table 2.2: Trials for 2020, incriminated crimes (articles of the Criminal Code) and the normalized number of violations, “political” (See signs of “political” trials on page 32) proceedings marked with an asterisk.

Article	X_s , coeff. violations	Article	X_s	Article	X_s	Article	X_s
437	3.73	307	0.53	258-3	0	253	0
377	2.82	263	0.51	438	0	209	0
286	1.83	127	0.5	427	0	206-2	0
364	1.5	121	0.49	407	0	199	0
317	1.47	109	0.48	366-1	0	189	0
190	1.31	128	0.37	365	0	161	0
149	1.3	115	0.33	364-1	0	147	0
342	1.27	113	0.32	358	0	146	0
260	1.24	110	0.26	357	0	125	0
366	1.17	191	0.25	353	0		
369	1.1	258	0.17	348	0		
187	1.01	ГП	0.17	345	0		
111	1.01	194	0.1	343	0		
NA	1	129	0.1	341	0		
368-2	1	186	0.09	340	0		
185	1	122	0.06	309	0		
289	0.56	258-5	0.02	263-1	0		
368	0.55	112	0.01	255	0		

Table 2.3: Coefficient of the number of violations in accordance with the article of Criminal Code, 2019-2020.

Article	X_s , coeff. violations	Article	X_s	Article	X_s	Article	X_s
190	5	109	0.69	437	0	187	0
286	4	149	0.5	407	0	161	0
438	2.2	258-5	0.35	366-1	0	125	0
113	1.58	258	0.34	365	0	115	0
342	1.5	146	0.33	357	0	112	0
260	1.42	127	0.33	345	0		
377	1.38	263	0.31	343	0		
111	1.07	128	0.3	340	0		
368	1	110	0.27	258-3	0		
186	1	121	0.14	255	0		
191	0.9	ГП	0	189	0		

Table 2.4: Coefficient of the number of violations in accordance with the article of the Criminal Code, 2019, normalization by hearings.

Table 2.5: Cases, incriminated crimes (articles of the Criminal Code), and the normalized number of violations. “Political” (see signs of “political” trials on page. 32) cases are marked with an asterisk (*).

Case	Articles	$\frac{\text{viol.}}{\text{hear.}}$	Case	Articles	$\frac{\text{viol.}}{\text{hear.}}$
2	187, 190	5	64	289	1
26	286	4	65	258, 258-5, 263	1
83*	258-3, 437, 438	3.73	67	187, 289	1
52*	111, 263	3.33	68	191	1
53	115, 377	3.15	69	NA	1
15*	109, 110, 111, 128, 263	3	70	187	1
9	115	2	71	115, 189, 263, 289	1
12	307	2	74*	110, 111	1
18*	258, 263, 342	2	75*	109, 112, 258, 258-3, 263	1
24*	111	2	78	186	1
32*	109, 110, 111, 161, 263	2	80	368	1
33	307, 309, 317	2	81	115, 190, 357, 358	1
44	191, 209, 366	2	85	187, 253, 263, 353	1
63*	110, 111	2	86	258, 263	1
84	369	2	87	206-2, 358, 366	1
92	187	2	97	115	1
93*	110, 260, 263	2	72	115	0.75
94	115	2	5	115, 189, 191, 209, 255, 263, 263-1, 307	0.67
88	289	1.67	6	122, 189, 194, 263	0.67
16	342, 345	1.5	10*	109, 115, 121, 340, 365	0.67
40	364	1.5	91*	111, 263	0.67
48	191, 366	1.5	31	127, 129, 146	0.6
76	187	1.5	96*	110, 258-3	0.57
73*	109, 112, 258, 258-3, 263	1.33	25*	110, 111, 258-3, 341	0.5
79	187	1.33	36	115	0.5
42	149	1.3	37	186, 190, 199	0.5
7	121, 146, 189, 255, 263	1.29	47*	111	0.5
35*	110, 113, 258, 258-3, 263	1.25	60	ГИ	0.5
50	121	1.25	89	146, 190	0.5
77*	191, 255, 258-3, 258-5, 366	1.14	90	286	0.5
1	366	1	58*	110, 111, 161, 258-3	0.4
8	368	1	3	115, 121, 340, 365	0.36
11*	111, 128, 407	1	4	127	0.33
13*	115, 127, 146, 255, 340	1	19	115	0
14*	110, 258-3	1	23	121	0
17*	263	1	28	ГИ	0
20	115, 194, 289	1	29	115, 187, 309	0
21	115	1	34	187	0
22	115	1	38	115, 189	0
27	191, 209	1	39*	147, 258, 263, 348	0
30	190, 209, 364-1	1	45	125, 343, 357	0

41	368-2	1	49	289	0
43	286	1	56	115	0
46	342, 345	1	59	187	0
51*	111	1	61	115	0
54*	109	1	66	345	0
55	191, 209, 358, 368, 369	1	82	115	0
57	121, 365	1	95	ГП	0
62	185	1	98	307, 309	0

Table 2.6: Cases, incriminated crimes (articles of the Criminal Code), and the total number of violations. “Political” (see signs of “political” trials on page. 32) cases are marked with an asterisk (*).

Case	Articles	Viol.	Case	Articles	Viol.
2	187, 190	5	64	289	1
26	286	4	65	258, 258-5, 263	1
83*	258-3, 437, 438	56	67	187, 289	2
52*	111, 263	10	68	191	1
53	115, 377	82	69	NA	1
15*	109, 110, 111, 128, 263	3	70	187	1
9	115	2	71	115, 189, 263, 289	1
12	307	2	74*	110, 111	2
18*	258, 263, 342	2	75*	109, 112, 258, 258-3, 263	1
24*	111	2	78	186	3
32*	109, 110, 111, 161, 263	2	80	368	1
33	307, 309, 317	2	81	115, 190, 357, 358	1
44	191, 209, 366	2	85	187, 253, 263, 353	1
63*	110, 111	10	86	258, 263	1
84	369	2	87	206-2, 358, 366	1
92	187	2	97	115	3
93*	110, 260, 263	2	72	115	3
94	115	2	5	115, 189, 191, 209, 255, 263, 263-1, 307	2
88	289	5	6	122, 189, 194, 263	2
16	342, 345	3	10*	109, 115, 121, 340, 365	6
40	364	3	91*	111, 263	2
48	191, 366	3	31	127, 129, 146	3
76	187	3	96*	110, 258-3	4
73*	109, 112, 258, 258-3, 263	4	25*	110, 111, 258-3, 341	1
79	187	4	36	115	1
42	149	13	37	186, 190, 199	1
7	121, 146, 189, 255, 263	9	47*	111	1
35*	110, 113, 258, 258-3, 263	5	60	ГП	2
50	121	5	89	146, 190	1
77*	191, 255, 258-3, 258-5, 366	8	90	286	1
1	366	1	58*	110, 111, 161, 258-3	6

8	368	1	3	115, 121, 340, 365	4
11*	111, 128, 407	1	4	127	1
13*	115, 127, 146, 255, 340	1	19	115	0
14*	110, 258-3	5	23	121	0
17*	263	2	28	ГИ	0
20	115, 194, 289	1	29	115, 187, 309	0
21	115	2	34	187	0
22	115	3	38	115, 189	0
27	191, 209	1	39*	147, 258, 263, 348	0
30	190, 209, 364-1	1	45	125, 343, 357	0
41	368-2	1	49	289	0
43	286	1	56	115	0
46	342, 345	1	59	187	0
51*	111	1	61	115	0
54*	109	1	66	345	0
55	191, 209, 358, 368, 369	1	82	115	0
57	121, 365	1	95	ГИ	0
62	185	1	98	307, 309	0

3 Reports of the monitoring of court sessions in 2020

The third part of the report includes the texts of reports prepared by ISHR experts during 2020. This information makes it possible to track the development of the judicial process in each particular case, to understand how negative trends were formed, to see whether or not the participants in the trial tried to prevent their formation.

Trials are presented in alphabetical order, and reports on specific court sessions are presented chronologically.

3.1 The trial of Evgeny Anisimov and others

Monitoring of the case of Anisimov E.A. and others (session 04.16.2020)

On April 16, 2020, in the Zavodskoy District Court of Zaporozhye, an open court session was held on charges of Evgeny Alexandrovich Anisimov, a Ukrainian businessman, of creating a criminal organization, extortion with threats of violence, illegal possession of weapons and a number of other articles of the Criminal Code.

In connection with the introduction of quarantine on the territory of Ukraine, ISHR observers monitored the observance of the right to a fair trial using the official online broadcast on the judicial authority's website.

The course of the hearing. At the preparatory hearing the defender of the accused - Krivko Yu.M. failed to appear (as it became clear from the broadcast), having sent by mail a request to postpone the hearing of the criminal proceedings in connection with quarantine and the inability to appear at the hearing from the Kiev region.

The lawyer of one of the victims, A. Artemov considered it appropriate to raise the issue of appointing a new defense counsel to the accused Anisimov Evgeny from among the lawyers of the Regional Center for Free Secondary Legal Assistance. The prosecutor,

the victims and their representatives also supported the idea of attracting another defender.

The accused himself objected to the application. Having heard the opinion of the participants in the proceeding, having examined the materials of the criminal proceedings, the court came to the following conclusion: counsel of the accused, Krivko Yu.M., repeatedly failed to appear at the preparatory hearing and lives in the Kiev region, in connection with the introduction of quarantine on the territory of Ukraine, one of the measures to prevent and spread the coronavirus in Ukraine is the closure of passenger traffic between cities; there is a likelihood of non-arrival of counsel for the next preparatory hearing. The court also emphasized that at the last court session the accused E. Anisimov informed the court that before the start of the preparatory court session he would conclude an agreement with another counsel who would defend him, but the new defender did not appear at the preparatory court hearing.

In accordance with Part 1 of Art. 49 of the Code of Criminal Procedure of Ukraine, a prosecutor or a court is required to ensure the participation of a defense counsel in criminal proceedings in cases where, in accordance with the requirements of Art. 52 of the Code of Criminal Procedure of Ukraine, the participation of a defense counsel is mandatory, and the accused did not attract a defense counsel.

According to Part 1 of Art. 52 of the Code of Criminal Procedure of Ukraine, the participation of a defense counsel is mandatory in criminal proceedings in relation to particularly serious crimes.

Considering the prosecutor's request for a lawyer for the defense, the court took into account the circumstances of the case, in particular, the increased public danger of criminal offenses and the significant public outcry, the mandatory participation of the defense attorney in criminal proceedings in relation to particularly serious crimes, and concluded

that it is advisable to bring a defense attorney in criminal production for the purpose of the defense.

In accordance with the requirements of Part 2 of Art. 49 of the Code of Criminal Procedure of Ukraine, the court in the deliberation room issued a ruling to appoint a lawyer to E.A. Anisimov and to ensure his arrival at 10:30 am, 05/07/2020 in the Zavodsky district court of the city of Zaporozhye to provide protection as intended.

However, Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) recognizes that everyone charged with a criminal offense has at least the right to defend himself in person or through legal assistance of his own choosing.

The relevant provisions are guaranteed by Article 59 of the Constitution of Ukraine: “Everyone has the right to legal assistance . . . Everyone is free to choose a defender of their rights.”

The ECtHR reiterates that, although it is not absolute, the right of everyone charged with a criminal offense to the effective assistance of a lawyer is one of the main features of a fair trial (“Krombach v. France”). A person accused of committing a criminal offense who does not wish to defend himself on his own should be able to resort to free legal assistance (“Hanževački v. Croatia”).

The principle of “right to defense” is in line with international human rights standards, which underlie the principle of a fair trial, the main purpose of which is to protect the accused from pressure from the authorities. It also aims to prevent miscarriages of justice and to fulfill the objectives of Article 6 of the Convention, especially the equality of parties to the investigation or prosecution and the accused (“Salduz v. Turkey”, “Bykov v. Russia”, “Pishchalnikov v. Russia”).

The second question raised by the court was concerning the criminal proceedings of Andrei Anatolyevich Grechkovsky and Elena Vasilevna Bondarenko on charges of extortion as part of an organized group, grievous bodily harm and drug possession. The case is at

the stage of preparatory proceedings. An issue of combining the above criminal proceedings and criminal proceedings on charges of Evgeny Anisimov needs to be resolved. A measure of restraint to the accused Grechkovsky Andrei and Bondarenko Elena was not select.

The prosecutor requested a decision at the discretion of the court. All the accused and the defenders of the accused objected to combining these criminal proceedings. Representatives of the victims Gladky D.V., Soloviev V.M., Artemov A.I. supported the opinion of the prosecutor. The victims themselves did not object to the unification of criminal proceedings.

Having heard the opinion of the participants in the trial, having examined the materials of the criminal proceedings, given that the charges brought by the accused in the criminal proceedings for a number of episodes are identical in essence, the same victims and witnesses participate in both trials, the panel of judges concluded that it would be expedient to combine criminal proceedings on charges of Anisimov E., Grechkovsky A. and Bondarenko E. in one proceeding with the aim of a full, comprehensive and objective consideration of criminal proceedings.

ISHR would like to note that this criminal proceeding has been in the court of first instance since April 08, 2019, but due to the self-recusation of judges who participated in the pre-trial investigation stage and the inability to assemble a panel of judges in full force, it was transferred from the Ordzhonikidze district court of Zaporozhye to the Zhovtnevy District Court of Zaporozhye, and from February 17, 2020 the criminal proceedings against Evgeny Anisimov were submitted to the Zavodskoy District Court of Zaporozhye.

In addition, in this session, quarantine norms were observed by all participants in the trial, except for the accused Anisimov Evgeny, who was without a protective mask.

Monitoring the case of Anisimov E.A., Grechkovsky A.A., Bondarenko E.V. (hearing on May 29, 2020)

On May 29, 2020, in the Zavodskoy District Court of Zaporozhye, an open court session

was held in a resonant criminal case on charges of: Anisimov E.A., a well-known businessman in Zaporozhye, in creating a criminal organization, extortion with threats of violence, and illegal possession of weapons and a number of other articles of the Criminal Code, Grechkovsky A.A. in attempted murder from hooligan motives, intentional murder from hooligan motives, extortion committed by prior conspiracy by a group of people, illegal sale of narcotic drugs, psychotropic substances or their analogues, Bondarenko E.V. accused of extortion committed by an organized group.

In connection with the operation of the quarantine regime on the territory of Ukraine, monitoring of the observance of the right to a fair trial and other rights of the accused under the Convention for the Protection of Human Rights and Fundamental Freedoms was carried out by the ISHR observer on the official online broadcast of the session, which was conducted on the website of the Judicial Authority of Ukraine.

The course of the hearing. The lawyer of the accused E. Anisimov, Krivko Yu.M., was finally able to arrive at the hearing, although Morgun A.E., appointed by the court from the center of free legal assistance also attended and formally continued to serve as the lawyer of the accused E. Anisimov.

Also, instead of the prosecutor Bychkov V.A., who previously participated in the case of the journalist Pavel Volkov (previously monitored by the ISHR), another prosecutor of the Zaporozhye regional prosecutor's office, Korkh D.A., immediately appeared that he was part of the group of prosecutors in the case and from that moment it will be he who will represent the prosecution in this case.

The first procedural action of a lawyer Krivko Yu.M. was an attempt to file a motion to challenge the prosecutor, filed in advance by the accused E. Anisimov. As the petition concerned the challenge of the prosecutor V. Bychkov, who was absent from the hearing, having consulted on the spot, the court decided that this challenge would be considered if and when the prosecutor V. Bychkov himself appeared at the hearing.

After that, the accused E. Anisimov accused the court of "draining" [verbatim] information about the petition filed by him to challenge the prosecutor's office and left the room in the pre-trial detention center, from which he participated in the hearing in the form of a video communication session, showing disrespect for the court.

In this regard, the prosecutor demanded that the court apply the norms of article 330 of the Code of Criminal Procedure of Ukraine to the accused E. Anisimov, according to which, if the accused violates the order in the courtroom or does not obey the orders of the presiding judge, the court can remove the accused from the courtroom temporarily or until the end of the trial .

The lawyers of the other accused noted that the prosecutor incorrectly pointed out the provisions of the article, since in this case the criminal proceeding provides for an official warning to the accused, and in case of repeated violation, the court can already remove the offender from the courtroom.

Presiding judge Marchenko N.V. announced a technical break so that the employees of the pre-trial detention center would return E. Anisimov to the room, from where the video call session was held. E. Anisimov during this break returned to this room. Even the court clerk had to participate in persuading the accused not to leave the room in the future, and to declare all his claims and petitions directly to the court collegiums. After which Judge Marchenko issued an official warning to E. Anisimov that if he still leaves the room, the court will remove him from the hearing, in accordance with the provisions of Article 330 of the Code of Criminal Procedure. To which the accused stated that he refused to take part in the hearing, and the lawyer Krivko Yu.M. announced the challenge of the panel of judges.

According to the lawyer, the court, combining the case of E. Anisimov and the case of A. Grechkovsky and E. Bondarenko in one proceeding, moreover, in that hearing where he, the defense attorney, could not attend because of quarantine, violated the accused's right to defense.

It should be noted that the proper exercise of the right to defense in criminal proceedings requires the application of the practice of the European Court of Human Rights, in accordance with the legal position of which, in particular, the decisions of the European Court in the case of “Nechiporuk and Jonkalo v. Ukraine”, the right of each accused to effective defense, provided by counsel . . . is one of the main features of a fair trial. ” The judgment of the European Court in “Crombach v. France” states that “although the right of every person accused of a criminal offense to effective defense by a lawyer is not absolute, it is one of the main grounds for a fair trial”.

The prosecutor objected to the lawyer’s motion that the motion to challenge the panel of judges was an abuse of the rights of the lawyer and the accused. The prosecutor also said that such actions aimed, in his opinion, to delay the proceeding, violate the rights of victims in this case.

Having returned from the deliberation room, the court announced the ruling on the refusal to challenge the judicial board, while referring to the norms of Articles 75, 76 of the Code of Criminal Procedure of Ukraine, according to which the lawyer Krivko Yu.M. did not cite the grounds for challenge, which are indicated in the articles of the code, and the arguments of his application contain only the grounds for appealing the decisions and the court verdict.

The court continued the hearing, while the prosecutor and the lawyer asked the court to consider, first of all, petitions for measures of restraint for the accused.

Prosecutor Korkh D.A., read out a request for an extension of the measure of restraint in the form of detention for E. Anisimov, as well as for A. Grechkovsky and E. Bondarenko - in the form of a round-the-clock house arrest.

The court heard the opinions of lawyers who insisted that, under the charges in the same case, their clients A. Grechkovsky and E. Bondarenko had already applied a measure of restraint in the form of detention and each of them spent several years in a pre-trial detention center (and with taking into account the “Savchenko law”, the period of

stay in the pre-trial detention center is considered to be doubled), at the moment, they are employed, successfully socialized, while not violating their procedural duties and requirements of the court. Having clarified the opinions of all participants in the proceeding, the court retired to the deliberation room.

After discussion, the court adopted a decision to satisfy the prosecutor’s application for the extension of detention without assigning bail to the accused E. Anisimov for 60 days, until July 27, 2020; refuse to satisfy the request for a measure of restraint in the form of round-the-clock house arrest for the accused A. Grechkovsky and E. Bondarenko.

At this hearing, which lasted a total of more than five hours, ended.

It also remains unclear whether the need for participation in this case by the lawyer A.E. Morgun, appointed by the court to E. Anisimov from the center for free secondary legal assistance (despite the fact that the court ruling of April 2, 2020 states that such a lawyer is involved in one procedural action - consideration of the prosecutor’s application for an extension of the measure of restraint to E. Anisimov). According to Ukrainian law, the participation of a “state” lawyer together with a lawyer under the contract is not provided for by agreement. The International Society for Human Rights already faced a similar violation in the case of V. Yanukovych, when the board of the Obolonsky district court in Kiev decided to appoint a public defender as the sixth in a group of five lawyers under the contract.

The case law of the European Court of Human Rights draws attention to the fact that the right to choose a lawyer is not absolute. Avoiding interruptions or rescheduled court hearings is in the interest of justice, which justifies the appointment of a free defense counsel contrary to the defendant’s wishes (“Karpyuk and Others v. Ukraine”). In this regard, violations of paragraph 1 and paragraphs “C” of paragraph 3 of Art. 6 of the Convention, in connection with the appointment of a free defense counsel to the applicant, the ISHR did not see. In the case of “Lagerblom v. Swe-

den”, the European Court of Justice indicated that the accused’s right to counsel “of his own choosing” is limited in a certain way when it comes to free legal aid. When appointing a defense attorney, the courts, although they must take into account the defendant’s desire, can act against such a desire if there are relevant and sufficient reasons to believe that the interests of justice require this.” A similar decision was made in the case of “Dvorski v. Croatia”, where it was also noted that, theoretically, if a suspect receives the assistance of a qualified defense attorney, bound by standards of professional ethics, instead of another defense attorney whom he would prefer to appoint, this alone is not enough, in order to conclude that the entire trial was generally unfair, with the proviso that there was no evidence of obvious incompetence or bias. ”

Nevertheless, if in this way one could try to justify the involvement of a “state” lawyer at the last court session, where there was no defense attorney under the contract, despite the protests of the accused, the participation of a lawyer from the secondary legal aid center is not determined by the practice of the ECtHR or national legislation. In addition, these court actions can be perceived as a violation of the right to a defense and a fair trial, guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Monitoring the cases of E. Anisimov, A. Grechkovsky, E. Bondarenko (hearing on May 18, 2020)

On May 18, 2020, the Zavodskoy District Court of Zaporozhye, in an open hearing, continued to consider the criminal case on charges of: Anisimov Evgeny Aleksandrovich, a well-known Ukrainian businessman in creating a criminal organization, extortion against Zaporozhye businessmen with threats of violence and a number of other articles of Criminal Code, Bondarenko Elena Vasilievna in extortion committed by an organized group, as well as Andrei Anatolyevich Grechkovsky - in intentional murder related to the activities of the above organized group, and other crimes. The decision to combine the proceedings against

E. Anisimov, as well as A. Grechkovsky and E. Bondarenko was made by the court at the hearing on April 16 (report for 04/16/2020).

In connection with the operation of the quarantine regime on the territory of Ukraine, monitoring of the observance of the right to a fair trial and other rights of participants in the proceedings provided for by the Convention for the Protection of Human Rights and Fundamental Freedoms was carried out by the ISHR observer using the official online broadcast of the hearing on the website of the Judicial Authority of Ukraine.

The course of the session. At this hearing the lawyer of the accused E. Anisimov - Krivko Yu.M. once again could not come. At the same time, the lawyer Krivko Yu.M. notified the court in writing that due to quarantine operating throughout Ukraine, he was unable to get to the court in the city of Zaporozhye and asked to postpone the hearing.

Earlier, the court issued a ruling (on 05/07/2020) and ordered the Regional Center for the provision of free secondary legal assistance to appoint a defender from the center of free legal aid to defend the accused E. Anisimov, and to ensure his appearance at the hearing on 05/18/2020 in the Zavodskoy District Court of Zaporozhye.

The lawyer Morgun A.E., appointed by the Center for the provision of free legal assistance, appeared at the hearing. The accused E. Anisimov himself took part from the pre-trial detention center in a video conference mode.

The session began by considering the applications of the participants in the proceeding. The first to consider the petition of the lawyer of one of the victims for holding hearings in closed court. Having interviewed all the participants, the court decided to postpone the solution of this issue until a decision is made on the fact of the appointment to the consideration of the case.

Then the court went on to consider the application for recognition as a victim - according to a statement from one of the individuals claiming to have suffered from the activities of E. Anisimov in Zaporozhye. But the prosecutor V. Bychkov did not support this petition, arguing

that he was not aware of the investigation of this episode.

At that moment, accused E. Anisimov turned to the court via video link. At first, the court did not give him the opportunity to read out the application, but, having conferred on the spot, court gave him the floor.

The essence of the petition of E. Anisimov was that he refuses to take part in the trial without his lawyer Krivko Yu.M., and so far he cannot take part in court hearings because of the quarantine announced by resolution of the Cabinet of Ministers of Ukraine No. 211 of 11 March 2020 “On preventing the spread of the COVID-19 coronavirus in Ukraine” (with the subsequent extension of the quarantine period), since the lawyer lives in the Kievsky region and is unable to come, on this basis E. Anisimov insists on reschedule the hearing.

Also, the accused E. Anisimov categorically disagrees that the court, contrary to his wishes and the fact that Anisimov has already concluded a legal assistance agreement with his lawyer, appointed him a free lawyer from the center of free legal assistance. He refers to the fact that the lawyer appointed by the court did not familiarize himself with the materials of the criminal case, and the accused cannot coordinate and determine the procedure and method of defense with him, being guided by the norms of part 1 of article 47 of the Criminal Procedure Code of Ukraine, according to which the defender is obliged to use the methods of protection provided for Code and laws, in order to ensure compliance with the rights, freedoms and legitimate interests of the accused.

At the same time, he referred to the norms of the Constitution of Ukraine, the Code of Criminal Procedure of the Law on Free Legal Aid, according to which he has the right to choose his own defense counsel, and the provision of free secondary legal assistance is terminated if the person uses the services of another defense counsel or involves another lawyer in the case. The accused himself attracted a lawyer Krivko Yu.M. for his defense and insists that this lawyer defend him in this proceeding, and refuses to participate in hearings without him.

Also, the accused asked the court to apply the rule of part 1 of Article 324 of the Code of Criminal Procedure of Ukraine, according to which, if the lawyer did not arrive in the hearing, in which the participation of the lawyer is mandatory, the court postpones the hearing and determines the date of the new session to enable the lawyer Krivko Yu.M. to appear in court in the city of Zaporozhye. Having submitted a petition, E. Anisimov stated that without a lawyer Krivko Yu.M. he will no longer answer any court questions, however, the court tried to continue the hearing and consider the petitions of other participants in the proceeding.

After that, the accused E. Anisimov left the room in the pre-trial detention center, from which the video conference was held with the court room and returned only to participate in the consideration of the postponement of the hearing.

Despite the objections of some of the victims and their lawyers, who insisted on the continuation of the hearing, the court, having conferred on the spot, decided to postpone the consideration of the case until May 29, 2020.

The court also announced that the petition of the prosecutor to extend the measure of restraint to the accused E. Anisimov, in the form of detention, will be considered on May 29, 2020.

The ISHR observer considers it necessary to note that according to the case law of the European Court of Human Rights, appointing a lawyer from a legal aid center instead of a lawyer with whom the accused has entered into an agreement on legal assistance, is a violation of the right to a fair trial and the right to defense, guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Thus, in a judgment of the Grand Chamber of the European Court of Human Rights in the case of “Dvorski v. Croatia”, the following is noted: “. . . Theoretically, if a suspect receives the assistance of a qualified defense attorney, bound by professional ethics standards, instead of another defense attorney whom he would prefer to appoint, then this alone is not enough

to conclude that the whole trial was unfair, with the proviso that there was no evidence sheer incompetence or bias. . .”

The International Society for Human Rights has repeatedly faced an attempt to attract “state” defenders not so much to ensure the right to defense of the accused, but rather to prevent a delay in the judicial review of the case (for example, the case of V. Yanukovich, the case of V. Muravitsky). Nevertheless, such a goal, in the opinion of the ISHR, cannot be considered justified if it jeopardizes one of the main components of the right to a fair trial - the right of a person to defend himself in person or through legal assistance of his own choosing (Article 6 of the European Convention on Human Rights).

Thus, the court’s decision to postpone the consideration of the case due to the inability of the lawyer to appear at the hearing for objective reasons cannot be considered one that delays the process of the consideration of the case.

Given the gravity of the crimes of which the three accused in this criminal process are charged, as well as the public outcry of the case, the International Society for Human Rights will continue to monitor this case.

3.2 The trial of Sergey Atroshchenko and others

Monitoring of criminal proceedings of Atroshchenko S.P., Zolotarev A.V., Kobak I.V. (session 03.13.20)

On March 13, 2020, a hearing was held in the Moscow District Court of Kharkov in case No. 643/13126/18 on charges of Sergey Pavlovich Atroshchenko (part 4 of article 189, part 2 of article 15, part 2 of article 28, part 2 Article 194, Part 2 Article 28, Part 2 Article 194, Part 2 Article 15, Part 3 Article 28, Part 2 Article 189, Part 3 Article 28, Part 2 Art. 122, part 1 of article 263 of the Criminal Code of Ukraine), Artem Vladimirovich Zolotarev (part 2 of article 15, part 3 of article 28, part 2 of article 184, part 3 of article 28, part 2 of article .122, part 1 of article 263 of the Criminal Code of

Ukraine), Kobak Ivan Vladimirovich (part 2 of article 15, part 3 of article 28, part 2 of article 184, part 3 of article 28, part 2 of article 122 Criminal Code of Ukraine). This case was chosen by the International Society for Human Rights due to the complication of the process of monitoring the observance of the right to a fair trial during the quarantine period.

The indictment has arrived at the Moscow District Court of Kharkov on September 14, 2018.

On March 13, 2020, it was planned to investigate the case file and interrogate witnesses. However, during the trial, the prosecutor refused several witnesses and promised to ensure the presence of another witness at the next hearing. In addition, the prosecutor filed several documentary evidence, which were attached to the case file.

Also, at this session, the panel of judges decided to consider extending the measure of restraint by the accused. The initiator of the consideration of the issue was the court itself due to the planned vacation of judges. However, it should be noted that the issue of extension was considered only a month ago - on February 11, 2020, and the terms of the measure of restraint were not yet coming to an end.

Since the parties were not ready to consider the issue of the measure of restraint, the prosecutor limited his position to the following phrase: “Risks have not disappeared and continue to exist”, without revealing and substantiating the risks themselves.

The defense has outlined its position against the extension of detention with the following arguments: - the issue cannot be considered without the filing of a petition by the prosecutor and, accordingly, its delivery to the defense; - the court extends the terms referring to the same circumstances (there were 12 extensions of the terms of detention); - the issue of measures of restraint was not considered separately for each of the accused.

The International Society for Human Rights notes that according to article 331 of the Criminal Code, the court has the right to initiate consideration of the advisability of extending the measure of restraint in the form of de-

tention until the expiration of the previously extended line. But, firstly, the period of detention has not yet expired, and, secondly, the court must adopt a reasoned determination based on the results of the review. An exceptional measure of restraint, such as detention, in accordance with the provisions of Ukrainian law (Article 183 of the Criminal Code) can be applied only if the prosecutor proves that none of the milder measures of restraint can be sufficient. A full video broadcast of the session, analyzed by the ISHR observer, confirms the fact that the formal requirements of the criminal proceeding were not met.

The European Court of Human Rights notes that the domestic courts must first ensure that in a particular case the pretrial detention of the accused does not exceed a reasonable time. To do this, they must, taking due account of the principles of the presumption of innocence, investigate all circumstances of the case, which can confirm or refute the existence of a social need that justifies deviations from the requirement to respect individual freedom and indicate this in their decisions on the extension of detention. The question of whether there has been a violation of paragraph 3 of Art. 5 for the protection of human rights and fundamental freedoms (hereinafter - the Convention), the Court must decide, relying mainly on the grounds given in these decisions (“I.A. v. France”, paragraph 102).

According to paragraph 3 of Art. 5 of the Convention after a certain period of time, the mere existence of reasonable suspicion does not justify the deprivation of liberty, and the courts must give other reasons for the extension of detention (“Borisenko v. Ukraine”, para. 50). Moreover, these grounds must be clearly indicated by the national courts (“Eloev v. Ukraine” para. 60, “Kharchenko v. Ukraine” para. 80).

The ISHR often found a violation of paragraph 3 of Art. 5 of the Convention in cases where national courts continued to be detained, referring mainly to the gravity of the charges and using template language, without even considering specific facts or the possibility of alternative measures (“Kharchenko v. Ukraine”,

paragraphs 80-81; “Tretyakov v. Ukraine” para. 59).

The existence of a reasonable suspicion of a crime committed by a detained person is a prerequisite for the legality of her continued detention, but after the lapse of time such a suspicion will not be sufficient to justify prolonged detention. The court never attempted to transfer this concept into a clearly defined number of days, weeks, months or years, or at different times depending on the gravity of the crime. Once “reasonable suspicion” is no longer sufficient, the court must establish that the other grounds given by the courts continue to justify the person’s deprivation of liberty (“Maggie and Others v. The United Kingdom”, paras. 88-89).

The Court also recalls the immutability of the grounds for suspicion. The fact that the arrested person has committed an offense is a *sine qua non* condition in order for his continued detention to be considered legal, but after a while this condition ceases to be sufficient. Then the Court must establish other grounds on which the decisions of the judiciary are based, continue to justify the deprivation of liberty. If these grounds turn out to be “relevant” and “sufficient”, then the Court will ascertain whether the competent national authorities found “special good faith” in the conduct of the proceedings (“Labita v. Italy”, paragraph 153).

As a result of the judicial review, the Court decided to extend the terms of detention for another 60 days.

Representatives of ISHR are concerned about this situation. The period of detention in this case was automatically extended, without the request of the prosecutor and the consideration of the risks themselves during the trial, without discussion of the parties.

In addition, we came to the conclusion that in 2020, part of the monitoring should be carried out in cases that are “not popular” among the media and international organizations, and are not “political”. Since they cannot be ignored.

Monitoring the case of Atroshchenko S.P., Zolotarev A.V., Kobak I.V.(hearing 04/29/2020)

Monitoring the case of Atroshchenko S.P., Zolotarev A.V., Kobak I.V. On April 29, 2020, a hearing was held in the Moscow District Court of Kharkov in case No. 643/13126/18 on charges of Atroshchenko Sergey Pavlovich, Zolotarev Artem Vladimirovich, Kobak Ivan Vladimirovich.

The defendants are suspected of organizing explosions and arson of the pharmacy chains “911” and “Wholesale prices pharmacy” in Kharkov. The indictment entered the Moscow District Court of Kharkov on September 14, 2018.

During the trial, the prosecutor attached some evidence to the case file.

In fact, the whole court session was reduced to the fact that the prosecutor read out the names of the attached documents. After that, the lawyers and the accused expressed their position regarding the evidence.

Acts of the Ministry of Justice of Ukraine, recommendations of the UN Monitoring Mission for Human Rights focus on the need to establish close cooperation with the judiciary on the possibility of holding court hearings mainly in the form of video-conference.

At the hearing on April 29 there were a panel of judges, a prosecutor, three lawyers, a representative of the victim, three accused and a convoy. In the current situation, when COVID-19 cases are recorded in the pre-trial detention center, only video conferences can ensure the safety of individuals.

As provided for by Art. 336 of the Code of Criminal Procedure of Ukraine, judicial proceedings may be carried out by video-conference during broadcasting from another premises, including those located outside the courthouse (remote judicial proceedings), in the event of: 1) the impossibility of direct participation of a participant in criminal proceedings in hearing for health reasons or other valid reasons; 2) the need to ensure the safety of persons; 3) the interrogation of a minor witness or a victim; 4) the need for such measures to ensure the speed of judicial proceedings; 5)

the presence of other grounds determined by the court sufficient. The court decides on the implementation of remote judicial proceedings on its own initiative or at the request of a party or other participant in the criminal proceedings. If the party to the criminal proceedings or the victim objects to the implementation of the remote trial, the court can decide on its implementation only by a reasoned determination, justifying the decision. The court does not have the right to decide on the implementation of remote trial, in which the accused is outside the courthouse, if he objects to this.

We do not know whether the issue of holding a hearing in the video-conference mode was raised. However, on the example of this case, the International Society for Human Rights focuses on the fact that the safety of the accused and the situation in the pre-trial detention center in many respects depends on the position of the court regarding the holding of court hearings by videoconference. And in today’s conditions, the petition of a party to criminal proceedings is not necessary for this. The court can initiate such a regime on its own, because human life and health are the highest value.

This proceeding was chosen by the International Society for Human Rights in connection with the complication of the process of monitoring compliance with the right to a fair trial during the quarantine period. The next hearing will be held on May 17, 2020.

Monitoring of criminal proceedings Atroshchenko S.P., Zolotarev A.V., Kobak I.V. (06/01/2020)

On June 1, 2020, a hearing in case No. 643/13126/18 was held in the Moskovsky District Court of Kharkov on the charges of Sergei Pavlovich Atroshchenko, Artem Vladimirovich Zolotarev, Ivan Vladimirovich Kobak. The accused are suspected of organizing the bombings and arson of the “911” and “Wholesale Prices” pharmacy chains in Kharkov.

Monitoring of criminal proceedings Atroshchenko S.P., Zolotarev A.V., Kobak I.V. is carried out, in connection with the quarantine, by watching video broadcasts on the website of the Judicial Power of Ukraine.

During the trial, the prosecutor continued to attach evidence to the case file.

As a reminder, in the report of the ISHR dated 03.13.2020, we focused on the problem of automatic prolongation of detention in case No. 643/13126/18. At the court session on March 13, 2020, the panel of judges itself initiated the consideration of this issue and, as a result, the terms were extended.

One of the defenders - Stavrov S.Y. filed an appeal against the court's decision to extend the terms of detention in relation to his client S.P. Atroshchenko. However, the Kharkovsky Court of Appeal, by its decision of 05.12.2020, rejected the complaint, arguing the refusal as follows: taking into account the factual circumstances of the criminal proceedings, the illegal actions that are incriminated to Atroshchenko S.P., committed according to the version of the preliminary investigation body, which the prosecutor considers proven, the accused took by damaging and destroying property on a large scale, out of mercenary motives, organized by a group of persons, according to a preliminary conspiracy, by means of an explosion, that is, in a generally dangerous way, with the use of RGD-5 fragmentation grenades in a number of episodes, and therefore, in the opinion of the panel of judges, there is a public interest in this criminal proceeding, which is the need to protect high standards of protection of the rights and interests of both society and victims. At the same time, it should be borne in mind that it is precisely because of the public danger of such actions that there are objective reasons to believe that the accused may be hiding from law enforcement agencies and the court, which, in turn, will lead to a violation of reasonable terms of the trial, as well as to improper observance by the parties of their procedural rights and responsibilities. In such circumstances, the panel of judges did not agree with the appellate arguments of the defense about the absence or loss of relevance of the risks that existed at the time of the selection of the measure of restraint in the form of detention, since the risk is an event that is likely to occur if there are certain grounds.

Also, on 07/05/2020, the Moskovskiy Dis-

trict Court of Kharkov once again extended the measure of restraint for the accused in the form of detention. In addition, the court drew attention to the failure to fulfill the obligations imposed on the prosecutor. "... The court draws attention to the fact that the obligation to prove the circumstances provided for by Article 91 of the Code of Criminal Procedure of Ukraine is assigned in this case to the prosecutor, however, the prosecution did not take measures for the purpose of a prompt trial and examination of the available evidence, which leads to repeated interruptions in court hearings and a violation of the principle of adherence to reasonable time limits. In such circumstances, given the fact that the case has been pending at the Moskovsky District Court of Kharkov for a long time, the defendants are being held in custody, and the examination of the evidence continues in violation of the reasonable time requirements, the court considers it expedient to ensure that the parties to the criminal proceedings comply with these requirements, to oblige the prosecution party until May 21, 2020 to submit evidence to the court on the said criminal proceedings and to ensure the appearance of the prosecution witness at the hearing.

In the absence of a court decision dated 05/21/2020, it can be concluded that, probably, on 05/21/2020, the court session did not take place. And on 06/01/2020, the prosecutor added all the remaining evidence. However, the prosecution asked the court to allow time to prepare for the examination of the audio evidence (the court did not have the necessary technical devices for the demonstration).

The indictment was received by the Moskovsky District Court of Kharkov on September 14, 2018. Thus, the case is being considered in court for a year and 7 months and, as the court indicated, the stage of the examination of evidence continues in violation of the requirements of reasonable time.

In its jurisprudence, the ECtHR insistently draws the attention of national courts "to a special duty to ensure that all parties involved in the proceedings do their utmost to avoid undue delay in the consideration of the case"

(“Vernillo v. France”). The provisions of Article 6 of the European Convention on Human Rights indicate that the accused cannot remain in the dark about their fate for too long (“Nakhmanovich v. Russia”, para. 89, “Ivanov v. Ukraine”, para. 71).

According to the ECtHR, “by requiring the consideration of cases within a ‘reasonable time’, the Convention emphasizes the importance of administering justice without delays, which could jeopardize its effectiveness and credibility” (“Vernillo v. France”, para. 38).

3.3 The trial of Igor Avramenko

Monitoring of criminal proceedings of Avramenko Igor Aleksandrovich (hearing 05/15/2020)

Monitoring of criminal proceedings of Avramenko Igor Aleksandrovich (hearing 05/15/2020) On May 15, 2020, a hearing was held in the Zheltovodsky city court of the Dnipropetrovsky region on charges of Igor Aleksandrovich Avramenko in committing a criminal offense under Article 366 of the Criminal Code of Ukraine (official forgery). The indictment was submitted to the court on August 30, 2018. The International Society for Human Rights has decided to monitor the observance of the right to a fair trial in this proceeding (in the video broadcast mode) due to the complexity of the work of the ISHR observers during the quarantine period.

On November 1, 2018, the indictment was returned to the prosecutor by court order on the basis that it did not meet the requirements of the content and form, namely, the prosecutor did not give the circumstances of the injury to the victim. A request for the return of the indictment was filed by the defense.

In the appeal against the court decision on the return of the indictment, the prosecutor indicated that the crime under Part 1 of Art. 366 of the Criminal Code of Ukraine has a formal composition and provides for criminal prosecution without socially dangerous consequences, however, subject to the requirements

of Article 55 of the Code of Criminal Procedure of Ukraine, a crime does not exclude the presence in such proceedings of a person who may be harmed, including moral. So, according to the prosecutor, the indictment does not contain any contradictions regarding the circumstances of the proceedings.

As a result of consideration of the appeal of the prosecutor, the court decision to return the indictment was canceled. Later, a request for the return of the indictment was filed by the victim, who indicated that the indictment, which is the result of a preliminary investigation, was not set forth in full, it did not indicate all the components of the act to be established and proved at the hearing, in particular, the type and the amount of damage that was caused to him. The victim’s request was granted by the Zheltovodsky City Court. Thus, the indictment was re-returned. But the prosecutor again filed an appeal and the Dnipropetrovsky Court of Appeal overturns the decision of the trial court.

At this hearing (May 15, 2020), the court did not begin consideration of the case, since: 1. the victim did not appear at the hearing (although according to the court, he was duly notified of the hearing); 2. the new prosecutor requested time to familiarize himself with the case file. The prosecutor, who previously represented the prosecution, was dismissed from the prosecution. According to the new representative of the prosecution, he became aware of his participation in the case the day before the court hearing after the end of the working day.

The defense did not object to the provision of time to the prosecutor and his request was granted. The trial was adjourned.

According to the observations of the representatives of the ISHR, staff changes in the prosecutor’s office may adversely affect the reasonable time for considering cases throughout Ukraine. Judges spoke about this negative trend at a regional working meeting in Kharkov. Court hearings must be postponed due to the failure of the prosecutors to appear. The reason for this was the certification procedure of prosecutors of regional prosecutor’s

offices. The ISHR will continue to monitor this negative trend.

In addition, it should be noted that the indictment in this case was submitted to the Zheltovodsky city court of the Dnipropetrovsky region on August 30, 2018. Thus, for a year and 8 months now, the case has not been heard. Two consecutive returns of the indictment at the initiative of the defense and the victim significantly affected the time frame for the consideration of the case. The last decision of the court of appeal on the annulment of the decision of the court of first instance to return the indictment to the prosecutor was made on October 4, 2019. And only on January 17, 2020, the next hearing was scheduled, which, as can be understood from the lack of court decisions, did not take place. And on May 15, 2020, for the above reasons, the case cannot be heard again.

Regarding this issue, Art. 6 of the European Convention on Human Rights recognizes the right of every person prosecuted in a criminal case to receive a final decision within a reasonable time on the validity of a charge against him, more precisely, the achievement that the accused did not remain for a long time under the weight of the charge and that a decision was made on the validity of the charge (“*Vemkhov v. Germany*”, para. 18, “*Julia Manzoni v. Italy*”, para. 25, “*Brogan and others v. United Kingdom*” para. 65).

Case law of the ECtHR aggressively draws the attention of national courts “to a special duty to ensure that all parties involved in the trial do everything in their power to avoid unjustified delay in the consideration of the case” (“*Vernillo v. France*”). The provisions of Article 6 of the European Convention on Human Rights indicate that accused persons cannot remain in ignorance for too long about their fate (“*Nakhmanovich v. Russia*”, para. 89, “*Ivanov v. Ukraine*”, para. 71).

3.4 The civil proceedings of LLC “BIOL”

Monitoring civil proceedings of LLC “BIOL” v. O. Dunaev (hearing 02/11/2020)

On February 11, 2020, the Zaporizhzhya Court of Appeal heard civil proceedings on the appeal of the “BIOL” Limited Liability Company against the decision of the Melitopol City District Court of the Zaporizhzhya Region of December 13, 2019 in the case on the claim of O. Dunaev to LLC “BIOL” on debt collection under a lease agreement.

We remind you that at the moment, the Melitopol City Court is considering several lawsuits with the participants in this proceeding, including the lawsuit of O. Dunaev against O. Shostak on the division of the “BIOL” plant located on the territory of Ukraine, and the lawsuit of O. Shostak against O. Dunaev on the return of funds paid.

Consideration of this proceeding began with a statement of the attorney of the “BIOL” for attaching documents to the case file: copies of “BIOL’s” statements regarding the commission of criminal offenses, as well as letters from the National Police of Ukraine to commence a pre-trial investigation on the grounds of criminal offenses and extracts from the register of pre-trial investigations for three criminal proceedings. This petition was submitted with the argument that the original of the contract appears in this case, which was not signed by the director of the “BIOL” LLC and that it became known at the time of the hearing on December 29, 2019 when it was considered in the court of first instance. Subsequently, the director of LLC “BIOL” initiated the submission of applications to the Main Investigation Department of the National Police of Ukraine on the grounds of criminal offenses under Art. 15, 190, 358 of the Criminal Code of Ukraine - fraud, forgery of documents. The court decided to attach the documents to the case file and study them simultaneously with other evidence in the deliberation room.

Due to the fact that in the court of first instance a copy of the lease agreement was added to the case file, in which there are a number of

disagreements with the lease agreement, which was signed by the director of “BIOL” LLC, the representative of “BIOL” LLC submitted the following petition for the appointment of judicial handwriting and technical examinations to clarify the originality of the signature in the Lease Agreement in the column “Director of ‘BIOL’ LLC – O. Shostak or another person”, as well as the validity of the seal of “BIOL” LLC.

When considering the application for examination, the Court took into account that the consideration of this application depends directly on whether it sees the original lease agreements or not. And also, given that at this stage the fact of the existence of the non-residential premises lease agreement itself is disputed, court suggested that both parties provide the original non-residential premises lease agreements and postpone the hearing to February 25, 2020.

Monitoring civil proceedings LLC “BIOL” v. O. Dunaev (hearing 02/25/2020)

On February 25, 2020, the Zaporozhsky Court of Appeal heard civil proceedings on the appeal of the LLC “BIOL” against the decision of the Melitopolsky City District Court of the Zaporozhsky Region of December 13, 2019 in the case on the claim of O. Dunaev. to LLC “BIOL” on debt collection under a lease agreement.

We remind you that at the last hearing, the Court invited both parties to provide the originals of the lease of non-residential premises, since at this stage the fact of the existence of the lease of non-residential premises was disputed, but none of the parties at the hearing on 02.25.20 provided the original of the agreement.

Representatives of LLC “BIOL” said that their original lease agreement was provided to the investigator of the National Police of Ukraine for judicial handwriting and technical examination of the signature in the Lease Agreement in the column “Director of BIOL LLC - O. Shostak or another person” and the validity of the seal of LLC “BIOL”, as evidenced by extracts from the Register.

The representative of Dunaev, for his part,

stated that his client was abroad Ukraine and until the last moment he had sought the opportunity to provide the original of the Agreement, again repeating that their original had been provided in the court of first instance and a copy was made from it, which was certified by the court and is in the case file. But not a single document confirming the words of the lawyer, including correspondence with the client was not provided, which was emphasized by the representative of LLC “BIOL” Malik Anastasia.

She also informed the court that the plaintiff’s side had provided the original and a copy of the lease of non-residential premises at that very court session in which she was absent for a good reason. It should be noted that the observer of the International Society for Human Rights attended the hearing. The procedure for providing the original contract and its assurance by the court was assessed by the objective observer as such, which raises doubts about compliance with the necessary procedural provisions of the Criminal Code and international law (the situation was described in more detail in previous reports).

The representative of LLC “BIOL” made an oral request for the court to make a decision to request the original lease of non-residential premises from O. Dunaev, to which the court asked why the investigator did not withdraw the lease agreement from O. Dunaev for the necessary examination and dismissed this application. Which also casts doubt on the impartiality of the court and its desire to study the case file in detail, since at the first hearing the court considered that the existence of lease agreements was necessary.

Having read the appeals of both parties, after hearing the explanations, arguments and reasoning of both parties, the court considered them insufficiently reasoned and left the decision of the trial court unchanged.

In the case of “Bochan v. Ukraine”, the applicant complained that, when considering her complaint, the Supreme Court “lost sight of some important aspects of the case, in particular the question of the authenticity of the main documentary evidence on which the decisions

of the national courts were based” (paragraph 29), that The Court has found a violation of Article 6 of the ECHR, namely the right to a fair trial.

3.5 The trial of Igor Bliznyuk and others

Monitoring of criminal proceedings of Bliznyuk I.A., Golovkin A.O., Khlapovsky Yu.M. (sessions 03.10.2020 and 03.11.2020)

On March 10, 2020, a hearing was held in the Ordzhonikidze district court of Kharkov in the case No. 644/192/18 on charges of I.A. Bliznyuk, A.O. Golovkin, and Yu.M. Khlapovsky (part 1 of Article 255, part 4 of article 28, part 3 of article 146, part 4 of article 28, part 4 of article 189, part 1 of article 263 of the Criminal Code of Ukraine).

The indictment was filed with the Ordzhonikidze District Court of Kharkov on January 11, 2018. Thus, criminal proceedings have been heard for more than two years and are at the stage of investigation of evidence. Judges and lawyers drew attention to the systematic failure to appear of victims and the prosecutor. Due to such non-appearance, hearings are adjourned.

Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention) recognizes the right of every person prosecuted in a criminal case to receive a final decision within a reasonable time on the validity of a charge against him, more precisely, the achievement that the accused did not remain for a long time under the weight of the charge and that a decision was made on the validity of the charge (“Vemkhov v. Germany”, para. 18, “Julia Manzoni v. Italy”, para. 25, “Brogan and others v. United Kingdom” p. 65). The provisions of Article 6 of the European Convention on Human Rights also indicate that accused persons cannot remain in ignorance for too long about their fate (“Nakhmanovich v. Russia”, para. 89, “Ivanov v. Ukraine”, para. 71).

However, the courts are deprived of the op-

portunity to consider cases within a reasonable time if one of the parties (in this case it is the prosecution) systematically ignores its obligations and does not appear at court hearings.

On March 10, the panel of judges considered a request for an extension of the measure of restraint for Bliznyuk I.A. (round-the-clock house arrest), Khlapovsky Yu.M. (detention), Golovkina A.O. (detention). And the next day - March 11, 2020, the court ruling on the extension of measures of restraint by the accused was announced: Khlapovsky Yu.M. and Golovkin A.O. the period of detention was extended, however, for I. Bliznyuk the measure of restraint was changed from round-the-clock house arrest to partial house arrest (with the right to leave housing during a certain period of the day). Such changes are justified by the presence of a serious illness of the accused (hepatitis) and the need for adequate treatment. The International Society for Human Rights draws attention to the fact that the ECtHR has repeatedly insisted that the state [represented by the judiciary] should ensure that the person is not subjected to disasters and hardships whose intensity exceeds the inevitable level of suffering inherent in detention (“Krivolapov v. Ukraine”). Thus, the court’s decision to change the measure of restraint in connection with the need for treatment is a positive fact in light of the allocation by the ISHR of the negative trend of “torture and degrading treatment” (Report for 2019), including the failure to provide persons in custody with the necessary medical care.

In addition, it should be noted that during the trial the defendants were next to the defenders and not in the glass boxes, which is also positive in the aspect of Art. 3 of the Convention.

Monitoring of criminal proceedings on charges against Bliznyuk I.A., Golovkin A.O., Khlapovsky Y.M. (July 2, 2020)

On July 2, 2020, in the Ordzhonikidzensky District Court of Kharkov, a hearing was held in case No. 644/192/18 on charges of I.A. Bliznyuk, A.O. Golovkin, Y.M. Khlapovsky in abductions and extortion by an organized

group of persons, as well as other criminal offenses (under Part 1 of Art. 255, Part 4 of Art. 28, Part 3 of Art. 146, Part 4 of Art. 28, Part 4 of Art. 189, Part 1 of Art.263 of the Criminal Code of Ukraine).

The majority of the victims were absent at the hearing and no witnesses appeared. The defendants took part via videoconference. In this composition, the panel of judges, after listening to the opinion of the parties, decided to consider the issue of extending or changing the measure of restraint for the accused, and postponing the examination of the evidence.

The prosecutor applied for an extension of the detention of Khlapovskiy Y.M. and Golovkin A.O., as well as the extension of the night house arrest for Bliznyuk I.A. The petition was motivated by the severity of the charges, as well as by the fact that the accused may abscond from justice.

The defendants' lawyer objected to this request. In particular, he pointed out that the gravity of the charge cannot be the main reason for extending the detention. The defense attorney also referred to the groundlessness of the charges.

The ECtHR has repeatedly noted that the gravity of the charge cannot in itself justify long periods of detention (“*Ecius v. Lithuania*”).

The ECtHR also often found a violation of paragraph 3 of Article 5 of the Convention in cases where domestic courts continued detention, referring mainly to the gravity of the charges and using formulaic language, without even considering specific facts or the possibility of applying alternative measures (“*Kharchenko v. Ukraine*”, paras. 80-81; “*Tretyakov v. Ukraine*”, para. 59).

The court, after consulting, decided to satisfy the prosecutor's request. The next court hearing is scheduled for August 10, 2020. The International Society for Human Rights will continue to monitor this case.

Monitoring of criminal proceedings of Bliznyuk I.A., Golovkin A.O., Khlapovskiy Y.M. (hearing 08.10.2020)

On August 10, 2020, in the Ordzhonikidze District Court of Kharkov, a hearing was held in case No. 644/192/18 on charges of I.A. Bliznyuk, A.O. Golovkin, Y.M. Khlapovsky. They are accused of committing crimes under part 1 of Art. 255, part 4 of Art. 28, part 3 of Art. 146, part 4 of Art. 28, part 4 of Art. 189, part 1 of Art. 263 of the Criminal Code of Ukraine.

At the hearing, the issue of extending or changing the measure of restraint for the accused was considered.

This is the third hearing in case No. 644/192/18, which is monitored by a representative of the ISHR for the observance of the right to a fair trial. At each of the sessions, the issue of extending the measure of restraint was raised, but there is no progress in the consideration of the case in essence, and the study of evidence. If we analyze all the court decisions taken by the court in the case this year, it can be stated that they concerned only the extension of the measure of restraint for the accused (not counting the court decision of May 7, 2020 on ensuring the safety of the victim in the form of personal protection).

Recall that the indictment was received by the Ordzhonikidze District Court of Kharkov on January 11, 2018. Thus, in the case of Bliznyuk I.A., Golovkin A.O., Khlapovsky Y.M. there is a negative tendency towards violation of reasonable terms of the criminal procedure.

Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms recognizes for every person prosecuted in a criminal case, the right to receive, within a reasonable time, a final decision on the validity of the charges against him, or rather to ensure that the accused do not remain for a long time under the weight of the charges and that a decision be made on the validity of the charge (“*Wemkhov v. Germany*” § 18, “*Giulia Manzoni v. Italy*” § 25, “*Brogan and Others v. United Kingdom*” § 65).

The ECtHR reminds that the accused in

criminal proceedings should have the right to have the proceedings in his case carried out with particular care, especially in the case of any restriction of freedom for the period until the end of the proceedings. Article 6 of the ECHR requires courts to use all available procedural means to establish the guilt or innocence of a person without undue delay. This requirement is intended to ensure the earliest elimination of uncertainty regarding the legal fate of the accused, who remains in a state of uncertainty throughout the entire period of proceedings, despite the fact that the proceedings are ongoing or have been suspended (“Doroshenko v. Ukraine”, § 41).

The prosecutor applied for an extension of the detention of Khlapovskiy Y.M. and Golovkin A.O., as well as the extension of partial house arrest for Bliznyuk I.A. The petition is motivated by the fact that the risks, on the basis of which the defendants were chosen measures of restraint, continue to exist.

The defendants’ lawyers objected. The defenders pointed to the declarative nature of the prosecutor’s statements, as well as the lack of argumentation of the risks.

The judges, after a break, decided to grant the prosecution’s motion. The court pointed out that the factual circumstances of the crimes incriminated by the accused, which testify to their increased social danger, together with the severity of the possible punishment and information about their personality. All these refute the arguments of the defense about the lack of evidence and groundlessness of the risks provided for in Part 1 of Art. 177 of the Criminal Procedure Code of Ukraine.

It should be noted that Khlapovsky and Golovkin have been in custody for over 3 years.

The ECtHR recognizes that the existence of a reasonable suspicion of a serious crime committed by the accused may initially justify detention. However, the Court has repeatedly noted that the gravity of the charge cannot by itself justify long periods of detention (“Borotyuk v. Ukraine”, § 61).

According to paragraph 3 of Art. 5 after a certain time has elapsed, the mere existence of reasonable suspicion ceases to be a basis for de-

privation of liberty and the judicial authorities are required to provide other grounds for continued detention. Moreover, such grounds must be clearly indicated by the national courts (“Kharchenko v. Ukraine”, § 80).

Monitoring of the criminal proceeding of Bliznyuk I.A., Golovkin A.O., Khlapovsky Yu.M. (10.15.2020)

On October 15, 2020, the Ordzhonikidze District Court of Kharkov held a hearing in case No. 644/192/18 on charges of I.A. Bliznyuk, A.O. Golovkin, Yu.M. Khlapovsky. (part 1 of article 255, part 4 of article 28, part 3 of article 146, part 4 of article 28, part 4 of article 189, part 1 of article 263 of the Criminal Code of Ukraine). According to information published in the media, the defendants were engaged in illegal actions such as torture, extortion, etc.

The court session was held with the participation of the prosecutor, the accused and their defenders. The victims and their representatives did not appear at the hearing. Despite this, the parties considered it possible to hold the hearing without them.

Written evidence was examined at this hearing. At the beginning of the hearing, a discussion arose about the protocol of presentation for identification, which indicated that the witness identified the accused from photographs, but earlier, during interrogation in the trial, he indicated the opposite. The prosecutor announced her intention to file a motion to re-examine the witness. The defense expressed the opinion that before being interrogated in court, the witness took an oath and in the courtroom none of the parties exerted pressure on him, and at the stage of the pre-trial investigation the possibility of pressure from the investigator is not excluded. Therefore, the testimony of a witness in court has more weight than the protocol of presentation for identification.

Also, at the hearing, the prosecutor filed as documents the decisions on the appointment of examinations in the specified criminal proceedings and the protocols of taking samples for examinations. The prosecutor motivated her decision by the fact that these documents

prove the legality of conducting expert examinations in criminal proceedings and the admissibility of the expert's conclusions. The panel of judges drew the attention of the prosecution to the fact that these documents do not prove the circumstances and facts specified in the indictment, and the defense does not dispute the legality of the examination. The lawyers and the defendants confirmed that they had no doubts about the observance of the procedure for conducting expert examinations.

Also, the prosecutor submitted an expert opinion that it was Golovkin A.O. who used the car. The defense stated that it does not dispute this circumstance. The court noted that the inclusion of the mentioned expert opinion is meaningless, since this circumstance is not disputed by any of the parties.

It can be assumed that the provision of this kind of evidence to the court has the goal of either delaying the proceeding, or maximizing the number of volumes of the case, complicating it.

It should be noted that the indictment against Bliznyuk I.A., Golovkin A.O., Khlapovsky Yu.M. entered the Ordzhonikidze District Court of Kharkov on January 11, 2018. Thus, the trial in this criminal proceeding lasts almost 3 years. Court sessions are scheduled once a month (summarized information). This case has been monitored since March 2020. In fact, all court sessions are devoted to the issue of extending the terms of a measure of restraint for the accused, but in fact the case is not considered. Back in the report for March 11, 2020, the representative of the ISHR indicated that the case was at the stage of examining the evidence. And only today, October 15, 2020, the participants in the proceeding began to study the evidence. This is a positive dynamic in the case, but it cannot neutralize previous negative trends in the aspect of the implementation of the requirement to consider the case within a reasonable time.

Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms recognizes for every person prosecuted in a criminal case the right to receive, within a reasonable time, a final decision on the valid-

ity of the charge against him, or rather, the achievement of ensuring that the accused do not remain for a long time under the weight of the charge and that a decision is made on the validity of the charge ("Vemkhov v. Germany", paragraph 18, "Julia Manzoni v. Italy", paragraph 25, "Brogan and Others v. United Kingdom" paragraph 65).

In its judgments, the ECtHR indicates that the accused in criminal proceedings should have the right to have the proceedings in his case carried out with special care, especially in the case of any restriction of freedom for a period until the end of the proceedings. Article 6 of the ECHR requires courts to use all available procedural means to establish the guilt or innocence of a person without delay. This requirement is intended to ensure the earliest elimination of uncertainty regarding the legal fate of the accused, who remains in a state of uncertainty throughout the entire period of proceedings, despite the fact that the proceedings are ongoing or have been suspended ("Doroshenko v. Ukraine", paragraph 41).

The positive thing during the trial was that the defendants were next to the defense lawyer during the trial, and not in the glass boxes. It is worth noting that the courts more often are observing the implementation of the right of the accused to effective legal assistance and satisfy the request of the accused to be seated next to a lawyer.

Monitoring of criminal proceedings of I.A. Bliznyuk, A.O. Golovkin, Yu.M. Khlapovsky (hearing on 11/19/2020)

On November 19, 2020, in the Ordzhonikidze District Court of Kharkov, a hearing was held in case No. 644/192/18 on charges of I.A. Bliznyuk, A.O. Golovkin, Yu.M. Khlapovsky, who are accused of abducting people, cruel torture, they were engaged in extortion (part 1 of article 255, part 3 of article 146, part 4 of article 189, part 1 of article 263 of the Criminal Code of Ukraine).

The court session began with an examination of the video recordings of the investigative experiments.

Then they moved on to the study of written

evidence. As written evidence, the prosecutor submitted a decision to appoint a group of prosecutors. To which the defense side asked the prosecutor a question: what confirms such evidence?

In the last report on the case of I. A. Bliznyuk, A.O. Golovkin, and Yu. M. Khlapovsky, the observer drew attention to the fact that the prosecutor haphazardly and unreasonably submits evidence. For example, at the hearing on October 15, 2020, an expert opinion was submitted that it was A.O. Golovkin who used his car. The defense side stated that it does not dispute this circumstance. The court noted that the inclusion of the expert opinion was meaningless, since this circumstance was not disputed by any of the parties.

The judges of the Ordzhonikidze District Court of Kharkov drew attention to the fact that in criminal proceedings evidence must be examined to confirm or refute the accusation. The accused have been in custody for more than three years, while the prosecutor submits evidence devoid of meaning.

Thus, the prosecutor, according to the court, piles up the case with unnecessary evidence.

The ECtHR often considered cases of violation of reasonable time limits in cases against Ukraine and indicated that those accused in criminal proceedings should have the right to have the proceedings in their case carried out with particular care, especially in the case of any restriction of freedom for a period until the end of the proceedings (“Doroshenko v. Ukraine”, para. 41).

The International Society for Human Rights believes that special care in the case of I.A. Bliznyuk, A.O. Golovkin, Yu.M. Khlapovsky should be manifested in the balance and reasonableness of the procedural actions of the prosecutor.

The provisions of Art. 6 of the European Convention on Human Rights indicate that accused persons cannot remain in uncertain about their fate for too long (“Nakhmanovich v. Russia”, para. 89, “Ivanov v. Ukraine”, para. 71).

According to the ECtHR, “by requiring the

consideration of cases within a ‘reasonable time’, the Convention emphasizes the importance of administering justice without delay, which may jeopardize its effectiveness and credibility” (“Vernillo v. France”, para. 38).

In the case of I.A. Bliznyuk, A.O. Golovkin and Yu.M. Khlapovsky for the second session in a row, the prosecutor proposes to examine evidence that does not help the court in moving forward in the consideration of the case. Such actions have a negative impact on the time frame for the consideration of the case and jeopardize the effectiveness of justice. Judges explain to the prosecutor the norms of the criminal procedural legislation, strive to consider the case in accordance with the standards of the Convention on reasonable time limits.

Monitoring of the case of I.A. Bliznyuk, A.O. Golovkin, Yu.M. Khlapovsky (hearing of December 2, 2020)

On December 2, 2020, the Ordzhonikidze District Court of Kharkov, continued to consider in open court remotely by videoconference (with broadcast from the Brovary City District Court of the Kiev Region, the State Institution “Kharkov Detention Center” and from the workplace of lawyer A.A. Pryadko) the case on charges of I.A. Bliznyuk, A.O. Golovkin, Yu.M. Khlapovsky. They are charged with Part 1 of Art. 255, Part 3 of Art. 146, Part 4 of Art. 189, Part 1 of Art. 263 of the Criminal Code of Ukraine - creation of a criminal organization, kidnapping, extortion, illegal handling of weapons.

At the beginning of the hearing, the victim A.M. Pokroeva filed a petition to ensure her participation and lawyer A.A. Pryadko in hearings by videoconference from the workplace of her lawyer due to the fact that she is afraid of contracting coronavirus. A.O. Golovkin and Yu.M. Khlapovsky objected to this petition, explaining that the more participants are connected, the more the program slows down. Nevertheless, the court granted the petition and a little later the lawyer got involved.

At this hearing, the court continued to examine the evidence of the prosecution.

The morning before the hearing the prosecutor said that she was ill, but she had all the documents that need to be presented to the court for admission to the evidence and the other prosecutors did not have a physical opportunity to get them.

Also, on December 4, the term of the measure of restraint for the accused expired and it was necessary to decide the expediency of extending the measure of restraint for A.O. Golovkin. and Yu.M. Khlapovsky in the form of detention and I.A. Bliznyuk - in the form of overnight house arrest.

The prosecutor referred to the risks that are provided for in paragraphs 1,3,5 of Art. 177 of the Criminal Procedure Code of Ukraine, namely the risk that the accused will hide from the court, unlawfully influence witnesses or victims, as well as that they may commit another criminal offense, which, in his words, do not decrease, do not cease to exist and in connection with this it is necessary to extend both measures of restraint: Golovkin and Khlapovskiy - detention, Bliznyuk - night house arrest. In response, the judge demanded that the prosecutor justify the above risks. To which the prosecutor replied that A.O. Golovkin, realizing that he had committed an especially grave crime, for which more than 10 years of imprisonment were provided, could hide from the court both within Ukraine and abroad. Regarding the pressure on other participants in the proceeding, he said that this is confirmed by the testimony of victims and witnesses. Since during the commission of the crime, violence was used - the victims are worried about their health, which indicates the existence of risks of the influence of the accused on the victims. He said the same about the other defendants.

According to the defense lawyer of the accused, the prosecutors are extending the terms of detention only for one reason - because of the inability of the prosecution to support the prosecution. He also drew attention to the fact that the hearing was never disrupted because of the defense. As for the risks, he stated that they were unfounded and asked the court to refuse to satisfy the prosecutor's motion.

The ISHR experts note the existence in the

Ukrainian criminal proceedings of a negative trend in the form of automatic prolongation of a measure of restraint in the form of detention, that is, an extension without sufficient grounds, evidence and confirmation by the prosecution of the existence of risks of non-fulfillment by the accused of their procedural obligations. The grounds given in applications for the extension / amendment of a measure of restraint often remain practically similar to each other for a long time and are clearly insufficient to meet the requirements of paragraph 3 of Art. 5 of the Convention (the right to trial within a reasonable time or to release pending trial).

It should be recalled that the European Court of Human Rights in its decisions indicates that the competent domestic authorities are obliged to provide relevant and sufficient reasons for both the appointment and the extension of the period of pretrial detention ("Buzadzhi v. Republic of Moldova", para. 58).

Also, according to the established case-law of the European Court, the presumption under Article 5 of the Convention speaks in favor of the release of the accused pending trial. As stated in paragraph 4 of the judgment of the European Court in the case "Neumeister v. Austria", the second part of paragraph 3 of Art. 5 of the Convention does not give the judicial authorities the choice between bringing the accused to trial within a reasonable time or his temporary release pending trial. Until the defendant is convicted, he must be presumed innocent, and the purpose of the Convention provision under consideration is essentially to demand his temporary release from custody as soon as the extension of detention ceases to be reasonable ("Bykov v. Russia", para. 61).

In the case of I.A. Bliznyuk, A.O. Golovkin, Yu.M. Khlapovsky, the prosecutor once again stated the same risks as before, without substantiating why over time they did not lose their relevance and did not prove their real existence. In addition, a witness took part in the hearing via video link, who expressed his opinion on the prosecutor's motion, fully supporting the opinion of the defense.

A.O. Golovkin, once again drew the court's attention to the fact that for three years none

of the risks from the prosecutor's request to extend the measure of restraint had changed. Yu.M. Khlapovsky and I.A. Bliznyuk also supported him.

The court announced a decision on the issue of extending measures of restraint for each of the accused on December 03, 2020. Based on the texts of the definitions, the prosecutor's requests were satisfied and the duration of the measures of restraint was extended until 02/01/2021.

3.6 The trial of Alexander Chibirdin

Monitoring the trial of A. Chibirdin (court hearing of January 30, 2019)

On January 30, in the Suvorovsky District Court of Odessa, a hearing was held in the case of the lawyer Alexander Chibirdin, who is charged with part 2, 4 of Art. 187 (robbery committed by prior conspiracy by a group of persons aimed at seizing property on a large or especially large scale), part 4 of Art. 190 (fraud) of the Criminal Code of Ukraine.

It turned out that the court assigned A. Chibirdin a bail in the amount of more than UAH 700,000 (the amount exceeds the limit foreseen by the sanction of the norms of the Criminal Code of Ukraine), the bar self-government body (NAAU) managed to collect the necessary money and A. Chibirdin left the pre-trial detention center before the new year.

At this hearing, a number of motions from the defense were examined. So, the lawyers filed a statement on the challenge of the judge motivating it by the statement that at the previous hearing the representative judge V. Poznyak read out the operative part of the court decision, which was not executed in writing and was not signed by the panel members, which, according to the lawyer, is confirmed by the audio recording of the court session. Among other things, the absence of signatures of the whole board is confirmed by the report of the auto distribution, according to which one of the members of the board was not part of it on the day of the court hearing. In other

words, the decision was made by an incompetent court, that is, a court created not by law. "Law", within the meaning of Article 6 § 1 of the Convention, includes legislation governing the establishment and competence of the judiciary ("Lavents v. Latvia", p. 114; "Richert v. Poland", p. 41; "Jorgić v. Germany", p. 64), as well as any other provision of the national legislation that, if violated, will make it illegal for one or more judges to participate in the proceedings ("Gorgiladze v. Georgia", p. 68; "Panjikidze and others v. Georgia", p. 104). The expression "created by law" covers not only the legal basis of the very existence of the "court", but also the implementation by the "court" of specific rules that govern its activities ("Gorgiladze v. Georgia", p. 68), and the determination of the composition of the court in each case ("Posokhov v. Russia", p. 39).

For example, in paragraph 115 of the "Lavents v. Latvia" case, the ECtHR decided that the composition of the court did not comply with the law, as two judges, in accordance with the law, could not participate in the consideration of the case.

Further, the lawyers challenged Judge Shkorupee, arguing that he was not a member of the board (see above). It is worth noting that after the challenge was announced, Judge Shkorupee did not behave in his inherent restrained manner. So, the judge emotionally asked the lawyers not about the reason for the challenge, but about whether they appealed the court decision, which they consider framed with procedural violations. Note that the issue was definitely inappropriate, since the decision referred to is not subject to appeal.

The court did not satisfy both petitions. The ISHR experts are not clear on the motivation of the court in making these decisions, since only the operative part was read.

The accused himself filed two petitions: the first about returning a certificate of the right to practice law and the second about the possibility of traveling to Kiev in order to stay with a child while he is undergoing medical treatment. These two applications were granted by the court.

The prosecution petitioned for an extension

of the measure of restraint to all the accused (although A. Chibirdin was bailed out, there are defendants in the proceedings who are still in jail today). We emphasize that the petition, which concerned the extension of the measure of restraint in the form of detention in custody, completely duplicated the one that the ISHR observer heard at the previous session. This fact is cause for concern, since the prosecution does not support its petitions with any evidence at all, but simply copies the risks foreseen by the norms of the Code of Criminal Procedure of Ukraine. At the same time, the defense side in its counterarguments cites a number of significant circumstances that cannot fail to incline the court to decide to change the measure of restraint, for example, the fact that some of the accused, including A. Chibirdin, are free and do not violate the obligations assigned to them, although earlier the prosecution duplicated an allegedly substantial list of risks on them. In general, the ISHR observer had the impression that it was not the prosecution that proved the guilt of the accused, but the defense proved the innocence, which directly contradicts the presumption of innocence. In “Telfner v. Austria”, p. 15, the ECtHR concluded that the presumption of innocence is violated if the burden of proof on the part of the prosecution is transferred to the defense.

Once again, we want to express our concern that the presiding judge already considers the defendants in this case guilty and that his colleagues are not taking any measures when deciding on the challenge of this judge. “The fact that judges are involved in deciding on the challenge of one of their colleagues can create problems if they themselves constitute the object of such a challenge. However, the circumstances of this case must be taken into account.” (“Debled v. Belgium”, p. 37).

Recall that during an interview with the Higher Qualification Commission of Judges, V. Poznyak spoke in the affirmative form about the guilt of A. Chibirdin in the crimes he was charged with. This indicates a clear biased attitude of the judge to the accused and is certainly a violation of the presumption of in-

nocence. For a trial to be considered fair, it is important that the judge is impartial and acts within the framework of the law. ISHR experts fully support the opinion of the ECtHR on this issue, namely, “Every judge with respect to whose impartiality there are legitimate doubts must leave the composition of the court hearing the case.” (“Housechildt v. Denmark” p. 48; Torger Torgerson v. Iceland p. 51).

3.7 The trial of Vladimir Dovgalyuk

Monitoring the case of Vladimir Dovgalyuk (session 01/14/20)

01/14/2020 in the Bogunsky district court of Zhitomir, a hearing was held in the case of Vladimir Dovgalyuk, accused of the murder of the Zhytomyr businessman A. Zhadko, which occurred on July 11, 2014 (paragraph 7 of part 2 of article 115 of the Criminal Code of Ukraine).

Hearing progress. One of the victims did not appear at the hearing, having previously warned the court about poor health. By agreement of the participants in the trial, the session was held in his absence.

The court examined the evidence filed by the prosecution. The first to consider the findings of a forensic psychological examination, drawn up in 2015. The examination was carried out based on a video recording of the interrogation of V. Dovgalyuk as a witness. After the examination, the experts should have seen the video on which it was conducted. The defense objected to the study of this disc and filed a motion declaring the evidence inadmissible and terminating its investigation. According to paragraph 1 of Part 3 of Article 87 of the Code of Criminal Procedure, the testimony of the suspect (accused) given by him in the procedural status of a witness is unacceptable evidence. The representative of the victims objected to the defense’s request and explained to the court that the prosecution is also against the court accepting the testimony of the suspect as a witness in the video, but asks to

investigate what the expert examined, namely the behavior of the witness.

The court retired to the deliberation room, after which it ruled to refuse to satisfy the request of the defense. The reason was that during the examination of the conclusion of the examination data, the appendix of which is a video disc, the participants in the court proceedings did not submit applications for the recognition of the conclusions of the examination as obviously inadmissible evidence. Due to the fact that the conclusion of the examination has already been investigated, in the court's opinion, there are no grounds to recognize the video disc as an integral part of the evidence, obviously inadmissible.

The defense filed a new petition - to recognize the entire forensic psychological examination as unacceptable evidence. Since the disk with the video recording of the interrogation of the witness is unacceptable evidence and the source of the conclusion of the examination.

The court retired to the deliberation room, after which it issued a ruling: the motion of the defense to satisfy and recognize the forensic psychological examination as obviously inadmissible evidence. In this regard, it was decided to stop the study of this disk. Further, the court continued to investigate the evidence of the prosecution, namely the video recordings of surveillance cameras and the response of the Andrushev Observatory to a request regarding the time of dusk. The defense did not object to the examination of this evidence.

During the monitoring of the trial, no violations were recorded.

3.8 The trial of Nazar Dubensky

Monitoring of the case of Nazar Dubensky (hearing on 08.19.2020)

On August 19, 2020, the Horodotskiy District Court of the Lvov Region considered the case in criminal proceedings number 12013150270000066 on charges of Nazar Vasilyevich Dubensky in the commission of: premeditated murder, that is, in the commission

of a crime under Article 115, Part 1 of the Criminal Code of Ukraine; illegal seizure of a vehicle, that is, in the commission of a crime under Article 289, Part 1 of the Criminal Code of Ukraine; deliberate destruction or damage to property, committed by arson, explosion or other socially dangerous means, or causing property damage on an especially large scale, or resulted in the death of people or other grave consequences, that is, in the commission of a crime under Article 194, Part 2 of the Criminal Code of Ukraine.

Criminal proceedings on charges of N.V. Dubensky considered single-handedly by judge Peretyatko O.V. The International Society for Human Rights is starting to monitor this case.

The course of the hearing. Prosecutor A. Begun, in a petition of 08.14.2020, and at the hearing, asked to extend the accused's detention period for 60 days, without determining the amount of bail, arguing that the elected for Dubensky N.V. measure of restraint in the form of detention ends on 08.23.2020, and the risks established by the investigating judge when choosing a measure of restraint during the pre-trial investigation did not disappear. In addition, the prosecutor noted that Dubensky N.V. is accused of committing a criminal offense, which is particularly serious and for which punishment is imprisonment for a term of seven to fifteen years. The evidence that gives grounds to suspect him of committing a crime, according to the prosecutor, is weighty, admissible and obtained in accordance with the procedure established by the Criminal Procedure Code of Ukraine.

As the European Court has repeatedly noted in its decisions, raising the issue of extending a measure of restraint should include not only the risks that existed at the time of the selection of the measure of restraint, but also new risks that may affect in any way the circumstances referred to by the prosecutor ("Buryaga v. Ukraine" para. 69). The ECtHR has often found a violation of paragraph 3 of Article 5 of the Convention in cases where domestic courts continued detention, relying mainly on the gravity of the charges and using formulaic language, without even considering specific facts

or the possibility of applying alternative measures (“Kharchenko v. Ukraine”, paras. 80-81; “Tretyakov v. Ukraine” para. 59).

According to the information provided to the court by the prosecution, Dubensky H.V. is not married, has no children, has no parents, does not work, his age and state of health allows to apply to him a measure of restraint related to imprisonment. In addition, the accused fled from the scene of the crime, hid the traces of the crime by destroying material evidence, is aware of the possible punishment if he is found guilty, therefore, he can hide from the pre-trial investigation authorities and the court, unlawfully influence victims, witnesses by persuasion and intimidation, can persuade them to change the testimony they provide, otherwise hinder the trial of criminal proceedings. The prosecutor also noted that the suspicion, in his opinion, is justified.

The defendant’s lawyer A.A. Shnitsar objected to the prosecutor’s petition, arguing mainly by the fact that such a petition was unfounded, not supported by the evidence specified in Article 177 of the Criminal Procedure Code of Ukraine. According to the defense, the accusation of a particularly grave crime is not grounds for detention, in addition, not a single piece of evidence in support of the guilt of N.V. Dubensky in the commission of the incriminated crimes, the prosecution has not been indicated in the petition. The lawyer asked to choose a measure of restraint not related to detention.

The accused Dubensky N.V. speaking in support of the position of his defender, he indicated that he has a permanent place of residence, lives with his parents. He noted that there was no evidence confirming his guilt in the case, and asked to apply to him a measure of restraint not related to imprisonment, namely house arrest or bail.

The injured Pak V.D. and his representative Vasilkevich V.M. asked to satisfy the prosecutor’s motion.

Having heard the prosecutor, defense counsel, the accused, the victim and his representative, having studied the petition, the court decided to continue the measure of restraint in

the form of detention for up to 60 days without determining the amount of bail.

3.9 The trial of Roman Dubinevich

Monitoring of the criminal proceedings of Roman Anatolyevich Dubinevich 05/12/2020

On May 12, 2020, the Lutsky City Court of the Volynsky Region heard a case on charges of Roman Dubinevich of committing a crime under Part 1 of Article 115 of the Criminal Code of Ukraine - intentional murder. The International Society for Human Rights has decided to monitor this proceeding via videoconference due to the difficulty of having a direct presence of observers at court hearings during a state of emergency (related to quarantine).

The course of the hearing. The accused stated that the prosecutor systematically indicates in the procedural documents that he [the accused] refuses to get acquainted with them. However, this is not true. In this regard, the court drew the attention of the parties to the prosecution and made a remark to the prosecutor, obliging them to continue to take action to ensure the reality of such an acquaintance.

At the hearing, the prosecutor’s request for an extension of the terms of detention was examined. As a result of its consideration, the application of the prosecutor was granted, since Dubinevich R.A. accused of committing a particularly serious crime, as well as to prevent the possibility of hiding from the court, the commission of other criminal offenses, illegal influence on victims and witnesses. According to the court, the extension of the measure of restraint in the form of the detention of the accused is justified, since this is demanded by the real interest of society, which, despite the presumption of innocence, prevails over the interest of ensuring the right to freedom.

It should be noted that the indictment entered the court on December 12, 2019, that is, 5 months ago. From that moment, the case was not actually considered. But the terms of detention are systematically extended.

According to paragraph 3 of Article 5 of the Convention after a certain period of time, it is just the existence of a reasonable suspicion that does not justify the deprivation of liberty, and the courts should give other reasons for the extension of detention (“Borisenko v. Ukraine”, para. 50). Moreover, these grounds must be clearly indicated by the national courts (“Eloev v. Ukraine”, para. 60, “Kharchenko v. Ukraine”, para. 80).

The European Court of Human Rights (hereinafter - the Court) often found a violation of paragraph 3 of Article 5 of the Convention in cases where the national courts continued to be detained, referring mainly to the gravity of the charges and using template language, without even considering specific facts or the possibility of alternative measures (“Kharchenko v. Ukraine”, paras 80-81; “Tretyakov v. Ukraine”, para. 59).

The existence of a reasonable suspicion of a crime committed by a detained person is an indispensable condition for the legality of continued detention, but after the lapse of time such a suspicion will not be sufficient to justify prolonged detention. The court never tried to translate this concept into a clearly defined number of days, weeks, months or years, or at different times depending on the severity of the crime. Once “smart suspicion” is no longer sufficient, the court must establish that the other grounds given by the courts continue to justify the person’s deprivation of liberty (“Maggie and Others v. The United Kingdom”, paras. 88-89).

The Court also recalls the immutability of the grounds for suspicion. That an arrested person has committed an offense is a “sine qua non” condition in order for his continued detention to be considered legal, but after a while this condition is no longer sufficient. Then the Court must establish that the other grounds on which the decisions of the judiciary are based continue to justify the deprivation of liberty. If these grounds turn out to be “relevant” and “sufficient”, then the Court will ascertain whether the competent national authorities found “special good faith” in the conduct of the proceedings (“Labita v. Italy”, para. 153).

The ISHR draws attention to the lack of adequate reasoning for extending detention. This is a common problem of the entire judicial system of Ukraine. If the risks do continue to exist, the measure of restraint should be extended, however, both the accused and the public (whose interests the court outlined in determination) have the right not only to clearly understand what specific risks are involved, but also the validity of these risks. The issue of extending the measure of restraint should be considered on the basis of the individual data of each case, and they should be reflected in the court decision. However, we see only general statements, passing from case to case, from one court decision to another court decision. Representatives of the ISHR are concerned about the attitude of prosecutors towards extending detention. As a rule, in the petitions there are no references to the facts of the case itself, the argument is reduced to general statements. This state of affairs violates the principle of legal certainty, since it is difficult for the defense to bring counter-arguments to non-existent arguments of the prosecution. And this, in turn, puts the burden of proof (on the groundlessness of the measure of restraint) on the accused and his lawyers.

Monitoring of criminal proceedings Dubinevich Roman Anatolyevich (December 22, 2020)

12/22/2020 in the Lutsk City District Court of the Volyn region with the participation of a panel of judges Y.D.Artysh, O.A.Kalkova, V.M.Pokidyuk a court hearing was held in case No. 154/3660/19 on charges of R.A. Dubinevich accused of the commission of a criminal offense under Part 1 of Art. 115 of the Criminal Code of Ukraine - “premeditated murder”.

Another prosecutor, who is a member of the group of prosecutors in this case, Polishchuk, arrived at the hearing. The prosecutor indicated that he was partially familiar with the case materials. Also, at this hearing there was a change from the side of the defense. The lawyer, who previously represented the interests of the accused, asked the court to suspend

his powers. Instead, the defense will be provided by lawyer E.V. Kovalenko on the basis of an agreement on the provision of legal assistance. The defendant did not object to the replacement of his lawyer.

The prosecution filed a petition for extension of measure of restraint for Dubinevich in the form of detention for a period of 60 days and indicated that the risks under Art. 177 of the Code of Criminal Procedure of Ukraine, which were previously the basis for the application of an exceptional measure of restraint in the form of detention, have not diminished. The prosecutor noted that R.A.Dubinevich can also put pressure on witnesses and the victim.

The accused completely objected to the prosecutor's request. Lawyer Kovalenko also supported the position of her client. In her opinion, the risk of influencing witnesses is not relevant, since the overwhelming majority of witnesses have already been questioned by the court. The lawyer petitioned to change the measure of restraint to round-the-clock house arrest. Moreover, in her opinion, there is a delay in the case, due to the frequent replacement of the leading prosecutor in the case and the unpreparedness of the prosecution for the trial.

Having evaluated the motions, the court ruled to satisfy the petition of the prosecution in full, extending the period of detention by 60 days. In turn, the court argued its position by the fact that the accused had committed a particularly grave criminal offense; in order to prevent the commission of new crimes, illegal influence on the witnesses in the case and the victim, there is a need to extend the measure of restraint for the defendant. In addition, the court referred to the practice of the ECtHR in the part that the existence of grounds for keeping the accused in custody should be assessed in each case, taking into account its specific features. Continued detention can be a justified measure in a particular case only if there are clear indications that it is required by the real public interest, which, despite the presumption of innocence, outweighs the interests of securing the right to liberty ("Ečius v. Lithuania", para. 93).

The observer of the ISHR notes the fact

that the extension of the terms of detention in the case of R.A. Dubinevich may become automatic over time. For the first time by the Lutsk City District Court of the Volyn Region, the term of detention R.A.Dubinevich was extended on December 16, 2019, which means that the accused has been in custody for more than one year, awaiting a court decision on unchanging risks.

The European Court of Human Rights argues that national courts must first and foremost ensure that, in a particular case, the detention of an accused does not exceed a reasonable time. To do this, they must, taking due account of the principle of the presumption of innocence, examine all the circumstances of the case that may confirm or deny the existence of a public need that justifies deviations from the requirement to respect individual liberty, and indicate this in their decisions to extend the term of detention ("IA v. France", para. 102).

Having studied all the decisions of the Lutsk City District Court of the Volyn Region on the extension of the term of detention in relation to the defendant, the ISHR draws attention to the fact that the national court did not change the rationale for the need to extend the term of detention from the moment of the first decision. Such actions may contradict the practice of the ECtHR.

According to paragraph 3 of Art. 5 of the ECHR, after a certain period of time, the mere existence of a reasonable suspicion ceases to be a basis for deprivation of liberty and the judicial authorities are obliged to provide other grounds for continued detention. In addition, such grounds must be clearly indicated by the national courts ("Kharchenko v. Ukraine", para. 80).

In the case of R.A. Dubinevich the decision of the national court was based on the following facts: R.A.Dubinevich is accused of committing an especially grave crime, on his part there may be unlawful influences on witnesses in the case and victims. Such arguments formed the basis of the first decisions of the national court to extend the period of detention and have remained unchanged for one year.

The European Court of Human Rights has often found a violation of paragraph 3 of Art. 5 of the Convention in cases where domestic courts continued detention, relying mainly on the gravity of the charges and using formulaic language, without even considering specific facts or the possibility of applying alternative measures (“Kharchenko v. Ukraine”, paras. 80-81; “Tretyakov v. Ukraine”, para. 59).

In addition, the ISHR experts draw attention to the frequent replacement of the lead prosecutor in this case. As the lawyer Kovalenko pointed out, the frequent replacement of the leading prosecutor in the case and the lack of preparation for the court session, as an example, of the prosecutor Polishchuk, indicates a delay in the proceeding. This, in turn, testifies to the unprofessional performance of their obligations by the prosecution.

It should be noted that two judges of the collegium, the secretary of the court and the prosecutor did not comply with the rules of quarantine restrictions, namely, they attended the entire session without protective equipment (masks), endangering their health and the health of others.

3.10 The claim of Iosif Dudich

Monitoring of administrative proceedings in the claim of Dudich Iosif Vasilievich (hearing on 10.09.2020)

On October 9, 2020, a hearing was held in the Lvov District Administrative Court, in which the administrative claim of Dudich Iosif Vasilievich against the Executive Committee of the Lvov City Council with the participation of a third party who does not declare independent claims on the subject of the dispute on the side of the defendant, Lvov communal enterprise “Zeleny Gorod”, was considered, in which the plaintiff requested to declare illegal and cancel the decision of the Executive Committee of the Lvov City Council dated 07.12.2018 No. 1343 “On the approval of urban planning conditions and restrictions for the design of a construction object for construction of the Lvov communal enterprise”

Zeleny Gorod “of a mechanical and biological complex for reloading and processing of solid household waste on the Plastovaya street, 13”.

The plaintiff and his representative, representatives of the defendant and a representative of a third party appeared at the hearing.

The court session began with the fact that the plaintiff’s representative filed an application for the removal of the presiding judge. The petition is motivated by the fact that since 2011 judge A.M. Sasevich has been on the list of persons who wish to receive housing (apartment) in ownership. According to paragraph 2 part “A” of Art. 30 of the Law of Ukraine “On Local Self-Government” to the jurisdiction of the executive bodies of village, city councils include the registration of citizens who, in accordance with the legislation, need to improve their living conditions; distribution and provision in accordance with the legislation of housing belonging to communal property. Accordingly, judge A.M. Sasevich is in the process of waiting to receive housing from a party to the case. On this basis, the plaintiff’s representative came to the conclusion that the presiding judge is directly interested in the outcome of the case. The defendant’s representatives objected to the satisfaction of the judge’s challenge, since the plaintiff had missed the deadline for filing such an application. Also, the representative of the defendant noted that this is already the 6th application for disqualification of judges filed by the plaintiff in this proceeding.

According to the established practice of the ECtHR, the existence of impartiality should be determined for the purposes of paragraph 1 of Art. 6 of the Convention using subjective and objective criteria. A subjective criterion is used to assess the personal conviction and behavior of a particular judge, that is, whether the judge showed bias or impartiality in this case. According to the objective criterion, it is determined, among other aspects, whether the court, as such, and its composition ensured that there was no doubt about its impartiality. In each individual case, it should be determined whether the relationship under consideration is of a nature and degree that indicates

that the court is not impartial.

The personal impartiality of the court is presumed until evidence to the contrary is presented (“Mironenko and Martynenko v. Ukraine”, paras. 66, 67).

The court dismissed the plaintiff’s application for challenge, stating that it is based on groundless assumptions about the possible dependence of a judge on the Lvov City Council, the executive committee of the Lvov City Council and its officials.

In his opening remarks, the representative of the plaintiff stated that the placement of a mechanical and biological complex for the transshipment and processing of solid household waste in the city of Lvov in the immediate vicinity of residential buildings violates construction standards, the requirements of legislation in the field of urban planning and in the field of environmental safety, creates an unconditional threat to life and health for residents of this district and Lvov in general, in which there are no conditions for the construction of such a complex.

The defendant draws attention to the fact that the State Sanitary Rules for Planning and Development of Settlements provide for the establishment of a standard for incineration and waste processing plants of a sanitary protection zone 500 m from residential buildings, which in this case is more than twice exceeded (the nearest residential building is located at a distance of 1050 m). In addition, GOS B.2.2.-12: 2019 allows the placement of objects for sorting and recycling of household waste in industrial and communal-warehouse areas of the city, and other requirements of building codes are subject to unconditional consideration during design, survey and construction work.

Lvov communal enterprise “Zeleny Gorod” notes that the applicant complied with all the requirements regarding the procedure for obtaining town-planning conditions and restrictions, the absence of grounds for refusing to provide and approve them, as determined by law. The third party also emphasizes that in reality there are no confirmed violations of the rights, freedoms or interests of the person who

filed a lawsuit, and he is not a party to legal relations related to the issuance and approval of urban planning conditions and restrictions. According to the third party, Iosif Vasilyevich did not provide a proper and reasonable justification for the connection between the decision made and the possible violation of his rights and did not confirm this in the proceeding with proper and admissible evidence.

After examining the evidence and arguing, the court retired to the deliberation room to pass a decision.

In its decision, the court indicated that the issues of environmental safety as a universal category and the right to a safe environment violated by the plaintiff are, of course, important and extremely serious, which requires a balanced and reasonable approach to its solution on the part of all participants in the case. At the same time, “speculation” on this topic without proper motivation and confirmation of claims, without their coordination with the requirements of the current legislation (which manifested itself during this trial) is doubtful, given the public interest. The Court notes that the principle of proportionality should also be taken into account in resolving such disputes, since the common interest of the city’s community also lies in efficient and modern waste management, thus meeting the necessary needs of the city and not only eliminating certain individual inconveniences. Moreover, it is obligatory for the plaintiff to prove the actual violation of his rights and interests as a prerequisite for applying for judicial protection. Bringing them the corresponding shortcomings and inconsistencies of the contested actions or decisions with the current legislation, as well as determining effective ways to restore their rights or protect their interests, would make it possible to balance these circumstances and make not only a legal, but also a fair decision on the merits of the dispute. However, the plaintiff did not respect such basic principles.

The ECtHR has repeatedly pointed out in its decisions that neither Article 8 nor any other provisions of the Convention guarantee the right to protect the natural ecological environment as such. Also, no question will arise if

the harm is insignificant compared to the environmental hazard inherent in life in every modern city. However, there may be a well-founded complaint under Article 8 where the environmental hazard reaches such a serious level that it significantly hinders the applicant's ability to use his home, private or family life. The assessment of such a minimum level is relative and depends on all the circumstances of the case, such as the intensity and duration of the harmful effect and its physical or psychological impact on human health or quality of life ("Dubetskaya and Others v. Ukraine", para. 105, "Grimkovskaya v. Ukraine", para. 58), which undoubtedly should be taken into account by the court in this case when making a decision.

Lvov Regional Administrative Court rejected Iosif Dudich's claim.

3.11 The trial of Alexandr Efremov

Monitoring the trial of Alexandr Efremov (sessions 06.16.2020 and 06.19.2020)

On June 16, 2020, in the Starobelsky District Court of the Lugansky Region, the case of Alexander Efremov was considered. The panel composed of judges: A.A. Pelikh, A.V. Tkach, I.V. Kudryavtsev. The case was selected for monitoring as one of the possible for consideration through the broadcast of the court sessions on the website of the Judiciary of Ukraine.

At the end of July 2014, the General Prosecutor's Office of Ukraine opened a criminal case against the member of the parliament of Ukraine, the leader of the Party of Regions faction, Alexandr Efremov. The deputy is accused of abuse of power. Presumably, Efremov put pressure on officials of the State Enterprise "Luganskugol" during the procedure for purchasing services for the installation of mining equipment and low-voltage equipment, as a result, the enterprise entered into agreements with economic entities controlled by Efremov at three times higher prices, which entailed grave consequences for the interests of the state. Preliminary qualification of a criminal

offense - Part 2 of Article 364 of the Criminal Code of Ukraine.

On February 14, 2015, Efremov was detained in Kiev by the General Prosecutor's Office and the Secret service (SBU). On February 16, the Pechersky District Court of Kiev arrested Efremov for two months, and the next day he was released on bail after posting a bail of 3.6 million hryvnias.

On February 18, new charges were filed accusing Efremov of financing terrorism. On February 25, the Pechersky Court decided to elect for Efremov a measure of restraint in the form of a bail of 60 thousand hryvnias - 50 minimum wages.

On October 20, 2015, the General Prosecutor's Office of Ukraine submitted the indictment against Alexandr Efremov to the court. On November 4, the electronic bracelet was removed from Efremov in connection with the expiration of the arrest period on November 1. On November 30, the Pechersky District Court of Kiev returned the indictment to the General Prosecutor's Office of Ukraine in the case against Alexandr Efremov.

In March 2016, the General Prosecutor's Office of Ukraine closed the criminal proceedings against Alexandr Efremov, opened on suspicion of inciting ethnic hatred (due to the lack of corpus delicti in his actions under Part 3 of Article 161 of the Criminal Code of Ukraine).

On July 30, 2016, the politician was detained for the second time on behalf of the Prosecutor General Yuriy Lutsenko "on suspicion of encroachment on the territorial integrity and inviolability of Ukraine". Efremov was detained at the Boryspol airport while trying to fly to Vienna (Austria). On August 1, the Pechersky District Court of Kiev decided to arrest Efremov for 2 months.

The indictment was received by the Starobelsky District Court of the Lugansky Region on January 11, 2017. For a long time, the district court extended the measure of restraint - detention. The detention was contested in the Court of Appeal, but by decisions of 03/01/2017, 06/18/2018, 10/17/2018, the appeal proceedings were denied. However, the Kiev Court of Appeal (decision of 08.22.2019) changed the

measure of restraint in the form of detention to round-the-clock house arrest.

And later, on September 18, 2019, the measure of restraint was changed from house arrest to personal obligation.

There is a tendency in the case of a gradual reduction of the measure of restraint. The longer the case is considered, the softer the measure of restraint. Which is in line with the case law of the European Court of Human Rights.

However, as indicated, the indictment entered the court on January 11, 2017. Thus, the case has been heard for more than 3 years.

Article 6 of the Convention recognizes for every person prosecuted in a criminal case, the right to receive, within a reasonable time, a final decision on the justification of the charges against him, or rather to ensure that the accused do not remain for a long time under the weight of the charge and that a decision on the justification is made (“Vemkhov v. Germany”, para. 18, “Giulia Manzoni v. Italy”, para. 25, “Brogan and Others v. the United Kingdom”, para. 65).

On June 16, 2020, the defendant’s lawyers reiterated their petition for temporary access to documents, namely, temporary access to information (materials of other criminal proceedings) contained in the Department of Organizational Support of the Unified Register of Pre-trial Investigations and Information and Analytical Work of the Office of the Prosecutor General (Head of Department - Bakai I.I.). Such a petition has already been submitted and was satisfied by a court decision of March 12, 2020. However, according to the lawyers, all the necessary materials were not provided for the execution of the court decision. In addition, a petition was filed for the joint consideration of individual applications for access to such information (consolidation of applications).

The prosecutor needed to get acquainted with the petitions. The hearing was postponed to June 19, 2020.

On June 19, 2020, the consideration of the case continued. Bakai I.I. was summoned to court but did not appear and it was decided to consider the applications without her presence.

The lawyers indicated that having received information about other criminal proceedings “...from which these criminal proceedings grew”, the court will see profanity and artificial creation of risks that were the basis of the court’s decision on detention.

In addition, the defenders indicated that for six months Bakai I.I. in all possible ways prevents the execution of court decisions on temporary access to things and documents. The materials are not provided in full.

Criminal proceedings have been opened regarding I. I. Bakai.

As a result of consideration, the petitions were granted.

3.12 The trial of Vladimir Evstigneev

Monitoring of the case of Vladimir Evstigneev (hearing of September 25, 2020)

On September 25, 2020, a hearing on the case of Vladimir Evstigneev was held in the Korolevsky District Court of Zhitomir. He is accused of committing a criminal offense under Part 2 of Art. 121 of the Criminal Code of Ukraine, namely - infliction of willful grievous injuries that led to death.

On the evening of March 21, 2020, V. Evstigneev, due to hostile relations, had a verbal conflict with his son, Andrey Evstigneev, and Vladimir, being in a state of alcoholic intoxication, stabbed his son with a severe degree of blows from which A. Evstigneev died. The accused partially admits his guilt.

Session progress: After clarifying all the organizational issues, the prosecutor read out the indictment.

It is worth paying attention to the fact that the victim Alla Chervinskaya did not appear at the hearing, without warning the court in advance, and, according to the accused, for this reason it was impossible to hold the hearing, since she must also testify.

In this context, it is necessary to take into account the practice of the ECtHR, which indicates that the personal presence of the

parties is necessary: a) to obtain evidence from them, if they are witnesses of important events in the case (“Kovalev v. Russia”, paras. 30-38); b) in order to enable the judge to come to a conclusion about the identity of the applicants, their abilities, etc. (“Shtukaturov v. Russia”, paras. 69-76).

The ECtHR also notes that a person is required to report his physical or other disability to the court in order to be able to ensure his [person’s] effective participation in the process (“Timergaliev v. Russia”, paras. 50-60).

It should be noted that the International Society for Human Rights is constantly observes the lack of sufficient number of judges in courts. In this regard, failure to appear in court without prior notification of the court or without a motion to consider the case in absence may be regarded as contempt of the court.

As a result, due to the failure of the victim and witnesses to appear, the court announced a break in the hearing until October 29, 2020.

The International Society for Human Rights is grateful to the Korolevsky District Court for the fact that, during the difficult period of quarantine restrictions, it provided an opportunity for our observer to be directly present at the court session to monitor compliance with the right to a fair trial. This allows us to note the openness of the court and the observance of the principle of publicity at a time when many courts significantly limit this principle.

3.13 The trial of Alexandr Filtsev

Monitoring of the Alexandr Filtsev case (sessions July 22-23, 2020)

On July 22, 2020, the Khersonsky Court of Appeal was supposed to consider the complaint of A. Filtsev’s lawyers against the decision of the Leninsky District Court of Nikolaev to extend the measure of restraint in the form of detention for 60 days.

Alexandr Filtsev is accused of committing criminal offenses under Articles 146 (illegal imprisonment or abduction of a person by an

organized group or one that entailed grave consequences) and 190 (large-scale fraud) of the Criminal Code of Ukraine.

Based on the appeal, the Leninsky District Court notified the lawyers too late about the scheduled meeting (at 11:30 am, despite the fact that the hearing was supposed to take place at 2:30 pm the same day), on that day one of the defenders was on sick leave. Due to the physical impossibility of arriving at the hearing in Nikolaev from Kiev in 3 hours, the lawyers petitioned to postpone the hearing. However, the court did not take into account that it was through its [court’s] fault that the lawyers could not arrive at the hearing on time, which is also confirmed by the dissenting opinion of the judge of the Leninsky District Court of Nikolaev (from 07.04.20), who in the document indicated the following: “In violation of Part 1 of Article 323 and Part 1 of Article 324 of the Code of Criminal Procedure of Ukraine, the court did not postpone the trial on July 4, 2020 in connection with the non-arrival of the accused O.M. Chaika, his defender Y.V. Timoshin, defenders A.L. Boryak and O.A. Garnik” [translation by author].

In this regard, the Leninsky District Court decided to appoint a lawyer for Alexandr Filtsev from the Center for Free Secondary Legal Aid - V. Bashchuk, against the wishes of the accused himself. When considering the appeal, the accused stated that he had said more than once that he had lawyers under the contract and he was against the participation of the appointed lawyer. In addition, after the hearing, V. Bashchuk, in explanation of her participation, which did not comply with the principles of the criminal proceedings, confirmed that she had violated the rules of advocate ethics, since she did not contact A. Filtsev’s lawyers, did not agree with them on her legal position, did not get acquainted with the case and was unable to provide legal assistance to the accused.

In this case, with the available documentary evidence (dissenting opinion of the judge, explanations of lawyer V. Bashchuk, statement of the accused and his lawyers), the International Society for Human Rights believes that there was a violation of A. Filtsev’s right to

defense.

The right to freely choose one's defense counsel is enshrined in article 14 (3) (d) of the International Covenant on Civil and Political Rights, article 6 (3) (c) of the European Convention for the Protection of Rights and Fundamental Freedoms, as well as at the national level - article 59 of the Constitution of Ukraine. Of course, the right to choose a defense lawyer is not absolute and can be limited under certain conditions, but only within the framework of the principle of fair trial. The appointment of a defense lawyer by the court can be used in the interests of justice, in order to avoid pauses or interruptions in the proceedings. At the same time, "the state cannot be held responsible for every mistake of the lawyer appointed to provide assistance. . .", but the competent authorities must intervene if the mistake of the appointed lawyer is obvious or is drawn to their attention in another way (ECtHR case "Croissant v. Germany"). In this case, the fact of violation of the right to defense of A. Filtsev when considering an application for the extension of an exceptional measure of restraint in the form of detention for the appeal instance seems obvious, since it contradicts national law as well.

The 2019 report of the ISHR on the observance of the right to a fair trial in Ukraine emphasizes that "the introduction of state protection without quality support only for the purpose of ensuring formal compliance with the norms cannot be considered as ensuring the realization of the right to defense". The right of a person charged with a criminal offense to an effective defense of a lawyer is one of the main foundations of a fair trial (ECtHR case "Crombie v. France").

The course of the hearing. On July 22, 2020, consideration of the appeal was to begin. The trial was to be held via videoconference with four contacts: the collegium of the court (the Khersonsky Court of Appeal), the prosecutor, lawyers (from the courts in Nikolaev and the Kiev region, respectively), as well as the accused himself at the conference from the pre-trial detention center. The ISHR observer had to wait about an hour while waiting for a

high-quality connection, after which it turned out that the prosecutor did not appear in the court in the city of Nikolaev from which he was supposed to take part in the hearing, without notifying either this court or the Khersonsky appeal court about his absence and the reason.

In connection with the failure of the prosecutor to appear, it was decided to postpone the hearing to 10:30 am the next day with a repeated notification of the prosecutor.

It should also be noted that the judges were dissatisfied with the behavior of the prosecutor, since due to the lack of judges in the criminal chamber of the Kherson Court of Appeal, they are very busy, and such a failure to appear by one of the parties without warning takes up time that they could devote to this or another case.

The course of the hearing. On July 23, 2020, for a long time, the court again tried to establish communication between the participants in the court session. In the opinion of the collegium, the poor technical support is a consequence of the substantial debt of the State Judicial Administration to Ukrtelecom (a provider of Internet services for the judicial system). After the connection was established, the court returned to considering the complaint.

Nevertheless, the observer points out that the periodically deteriorating communication could have prevented the collegium from receiving a high-quality speech of the lawyers, since more than once the defense lawyers had to stop, repeat partially what was already said, and the court was distracted by technical issues. The Collegium heard the arguments of A. Filtsev's defenders and the accused himself, as well as the prosecutor, who asked the court to refuse to satisfy the appeal, but did not give a single argument refuting the validity of the lawyers' appeal against the extension of the measure of restraint.

As a result, the court of appeal concluded that the "interests of justice" provided for the need to involve a "state" lawyer in deciding the issue of extending the measure of restraint. Based on the text of the ruling, the court of second instance, first of all, took into account

not the violation of one of the most important principles of the criminal trial - the right to defense, but the very need to extend the measure of restraint, based on the case materials, which were transferred by the Leningradsky District Court. In this regard, the question arises what is prevailing in the criminal proceeding: the right to defense or the “interests of justice”, and to what extent the interests of the accused can be limited in order to comply with the procedural “interests of justice”.

It should also be noted that in connection with quarantine measures, the Khersonsky Court of Appeal restricts the participation of public at hearings. In particular, the mother of the accused A. Filtsev was unable to attend both sessions. The presiding judge V. Zaichenko and the press secretary of the court I. Legkikh expressed their regret at the need to comply with such measures and assured that such restrictions are solely due to quarantine and after its ending, everyone will be able to attend open court hearings. The International Society for Human Rights is grateful for the opportunity for the personal presence of an official observer during the trial.

3.14 The trial of Dmitry Gubin

Monitoring the case of Dmitry Gubin (session 02.21.2020)

On February 21, 2020, a hearing of case No. 645/1034/19 was supposed to be held on charges of Dmitry Markovich Gubin under Part 1 of Art. 263 of the Criminal Code of Ukraine. However, the hearing was again rescheduled. The representative of the International Society for Human Rights considers the problem of the adjournment of court hearings in this case systematic. This time, the reason was the failure of the prosecutor to appear.

Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention) recognizes the right of every person prosecuted in a criminal case to receive a final decision within a reasonable time on the validity of the charge against him, or rather to ensure that the person does

not remain for a long time under the weight of the charge and that a decision is made on the validity of the charge (“Vemkhov v. Germany”, para. 18, “Julia Manzoni v. Italy”, para. 25, “Brogan and others v. the United Kingdom”, para. 65).

The provisions of Article 6 of the Convention on Human Rights indicate that accused persons cannot remain too ignorant of their fate (“Nakhmanovich v. Russia”, para. 89, “Ivanov v. Ukraine”, para. 71).

Also, in the opinion of the ECtHR “when demanding consideration of cases within a ‘reasonable time’, the Convention emphasizes the importance of administering justice without delay, which could jeopardize its effectiveness and credibility” (“Vernillo v. France”, para. 38).

In this case, not only the effectiveness of justice is at stake, but also the safety of the accused. On February 20, 2020, the day before the court hearing, a pogrom was committed in the apartment where Dmitry Gubin lives. This fact was discovered by the accused himself when he returned home.

According to the accused, having come home, he found several unknown persons in his dwelling. On his own, Dmitry Gubin could not get into his apartment, since the door was locked from the inside. It was possible to enter inside only with the help of a locksmith. At that time, the attackers managed to leave the house through the window. Things belonging to Dmitry Markovich and his wife were scattered throughout the apartment.

It is also worth noting that on the eve of the previous court session, which was supposed to be held on January 20, 2020, unidentified persons outlined the door of his apartment with paint.

3.15 The trial of Igor Gumenyuk

Monitoring of the case of Igor Gumenyuk and Sergei Kraynyak (hearing on 23.09.20)

On September 23, 2020, in the Shevchenkovsky District Court of the city of Kiev, a court hearing was held online in the case of the

activist of the nationalist party “Svoboda” Sergei Kraynyak, who is accused of committing crimes under Part 3 of Art. 258 of the Criminal Code of Ukraine (committing a terrorist act leading to the death of a person) and ex-fighter of the “Sich” battalion of the Ministry of Internal Affairs Igor Gumenyuk, who is accused of committing crimes under Part 3 of Art. 258, part 1 of Art. 263, part 2 of Art. 342 of the Criminal Code of Ukraine (committing a terrorist act leading to the death of a person; illegal handling of weapons, ammunition or explosives; resistance to a law enforcement officer in the performance of his official duties).

On August 31, 2015, the parliament of Ukraine in the first reading by 265 votes approved the presidential bill on amendments to the Constitution of the country regarding the decentralization of power. After that, under the parliament building, clashes between protesters against voting for this bill began with law enforcement officers. As a result of a grenade thrown at law enforcement officers, four soldiers of the National Guard were killed, more than 140 law enforcement officers and civilians, including media representatives, were injured. According to investigators, I. Gumenyuk threw a grenade, and S. Kraynyak lit a smoke bomb to help I. Gumenyuk carry out an explosion near the Parliament and hide.

The session on September 23 began with the fact that the defense attorney challenged the judge on the grounds that, in his opinion, the court violated the general principles of criminal proceedings adversarial nature and equality of parties. In particular, at the last court hearing in this case, namely on September 17, 2020, the court carried out a selective study and the announcement of four volumes of uncertified photocopies of documents, without a previously resolved issue regarding their edition to the materials of criminal proceedings. According to the lawyer, the court changed the procedure and way of examining evidence. These actions, according to the defense, indicate a violation of the principles of objectivity and impartiality and undermine public confidence in the court.

It should be noted that the case is considered

by a panel of the court with the participation of a jury. The defense also stated that the examination of the evidence without comments from the jury also confirms that they have lost objective signs of impartiality and that the jury is under the influence of the judge.

The court left the lawyer’s application without consideration, emphasizing that the defense was abusing the right to challenge, thus delaying the trial.

As a result, the lawyer Sviridovskiy A.A. also announced the challenge of the court, due to the fact that the court, in his opinion, by its actions violates the right of the accused to a fair trial. The lawyer emphasized the fact that the accused Gumenyuk I.V. for more than 5 years has been in custody, not being able to be directly in court and to participate in the examination of the evidence presented by the prosecutor and to express his opinion on this matter (the observer of the ISHR notes that at this session both accused were personally present in court). Like the petition of the lawyer Sviridovsky, the application for the disqualification of the lawyer Zarutsky was also left by the court without consideration, for the same reasons.

The International Society for Human Rights notes that, considering the ECtHR decision in the case “Vernillo v. France”, all parties involved in the proceedings must do their utmost to avoid undue delay in the proceedings. Thus, when identifying those guilty of delaying the proceeding, it is necessary to analyze the degree of involvement of the participants in the proceeding and the efforts they make to prevent unnecessary delay in the consideration of the case. That can be done later by monitoring this proceeding.

In addition, the defense insisted that the documents submitted by the prosecutor were falsified, since they were presented in an improperly executed form, but at the same time, they were accepted by the court (in the decision of the Supreme Court of May 8, 2019 in case No. 160/7887/18, the position regarding the compulsory certification of copies of procedural documents in accordance with the National Standard of Ukraine DSTU 4163-2003

“Unified system of organizational and administrative documentation” is set forth).

After that, the investigation of the evidence in this case began.

The prosecutor, in turn, stated that he did not see any violations of the law in this court proceeding, and therefore, continued to provide written evidence to the court and asked to attach them to the materials of the court proceeding.

The defense side filed a petition for the appointment of a technical examination of the documents provided by the prosecutor, including documents submitted at the last court session (September 17, 2020). After consulting on the spot, the court decided to reject this petition.

The International Society for Human Rights will continue to monitor this case in order to establish the details of this proceeding and determine whether there have been violations in the observance of the right to a fair trial.

However, it should be noted that, starting in 2018, the court decided to hold the proceedings behind closed doors at the request of the victims, due to the presence of aggressive activists at the court sessions. But, given the public outcry, the court decided to conduct online broadcasts of the sessions on the official website of the Judicial Power of Ukraine.

3.16 The trial of Anatoly Hranovskiy

Monitoring the case of Anatoly Hranovskiy (session 02.11.2020)

On February 11, 2020, in the Zhytomyrsky District Court, a preparatory hearing was held in the case of A. Hranovsky, accused of violating traffic safety rules or operating vehicles by persons driving vehicles that caused the death of several persons (part 3 of article 286 of the Criminal Code of Ukraine). At the time of the trial, the accused was in custody.

In the indictment, the investigation established that: On September 22, 2019 A. Hranovsky, driving a technically sound road train as part of a specialized cargo truck with a tank

semi-trailer, exceeding the safe speed, moved along the right lane of the Kiev-Chop road in the direction of Zhytomyr. Incorrectly assessing the traffic situation, having the technical ability to prevent collisions from the moment of detecting an obstacle to traffic, he hit a rear left side of the bus, which, being parked, was not moving on the right side of the road and partially the right lane of the roadway in the direction of traffic to the city of Zhitomir.

As a result of the accident, nine passengers of the bus received serious bodily injuries, as a result of which they died. In addition eight people received moderate injuries.

A brief chronology of the case. On September 24, 2019, at a public hearing in the Koroletsky district court of Zhytomyr, at the request of the prosecution, a measure of restraint in the form of 60-day detention was chosen for the suspect. The suspect in the court session confirmed his involvement in the accident, as a result of which people were killed and injured, pleaded guilty to the incident, but asked to apply measures of restraint in the form of house arrest, which he was denied.

According to the principles of territorial jurisdiction (part 1 of article 32 of the Code of Criminal Procedure of Ukraine), consideration of this proceedings was transferred to the Novograd-Volynsky district court of the Zhytomyr region. Then, at the request of the prosecutor, the Zhytomyr Court of Appeal “in order to ensure the speed, efficiency of criminal proceedings and the observance of reasonable time limits for the consideration of proceedings” decided to transfer the specified criminal proceedings to the Zhytomyr District Court of the Zhytomyr Region.

The course of the proceedings. On February 11, 2020, a preparatory hearing in the case took place in the Zhytomyr District Court. At the beginning of the court session, the court examined applications for recognition of persons as victims in this case. The judge also drew attention to the fact that persons who have not received moderate bodily injuries cannot act as victims, but only in the status of civil plaintiffs. The trial was attended by three representatives of the victims.

The prosecutor filed an application to challenge one of the defenders - S. Egorov. He also acted as a representative of the civil defendant in this case - LLC "Petrov Logistic."

In his statement, the prosecutor indicated that during the pre-trial investigation, the victims filed civil claims against the "Petrov Logistic", which is the employer of the accused, for compensation for moral and material damage. The CPC of Ukraine contains requirements, one of which is the right to a fair trial and effective legal defense of the accused. According to Art. 78 of the Code of Criminal Procedure of Ukraine, a defender and representative cannot be a person who takes part in criminal proceedings as a civil defendant. In part 2 of this article, it is stipulated that a person cannot be a defender and representative if in this proceeding he gives legal assistance to a person whose interests contradict the interests of the person who requested legal assistance. The prosecutor focused the court's attention on the fact that if lawyer Egorov has two procedural statuses at the same time, this can be perceived as a violation of the right to defense of A. Hranovsky and the interests of the accused and civil defendant may compete. The prosecutor also noted that since the lawyer Egorov primarily acquired the status of the defender of the accused, he should satisfy the challenge as a participant in the criminal proceedings as a representative of the civil defendant.

Lawyer Egorov pointed out that his position regarding the representation of interests of "Petrov Logistic" is fully consistent with his client and does not contradict the interests of "Petrov Logistic". The defendant also supported the position of his counsel.

The court found that in this criminal proceeding damages can be recovered from both the accused and the civil defendant as the employer. Moreover, according to part 1 of article 1191 of the Civil Code of Ukraine, in the presence of fault of the person who caused the damage, the person who is responsible for the damage acquires the right of the return claim (recourse) in respect of the guilty person in the amount of the compensation paid.

In view of the foregoing, the court concluded

that the interests of "Petrov Logistic" may be contrary to the interests of the accused in terms of his established guilt with the possibility of further submission of regressive claims, which, in turn, in accordance with the provisions of the Code of Criminal Procedure of Ukraine excludes the participation of lawyer Egorov in this case at the same time as counsel and representative of a civil defendant. The court granted the prosecutor's application to dismiss Egorov as a representative of the civil defendant, and thus the civil defendant will have to look for a new representative.

After the court decision was announced, lawyer Egorov suggested that the court postpone the preparatory hearing in order to enable the civil defendant to ensure the presence of another representative at the hearing.

The judge drew attention to the fact that according to Art. 6 of the European Convention for the Protection of Human Rights, the case must be examined in accordance with the principle of reasonable time. As the measure of restraint in the form of detention was applied to the accused and according to the presumption of innocence, he is innocent until the conviction has come into force, the court considers it necessary to consider such cases in the first place.

Monitoring the case of Anatoly Hranovskiy (session 03.03.2020)

March 3, 2020 in the Zhytomyr District Court, a preparatory hearing was held in the case of Hranovskiy A. accused of violating traffic safety rules or using vehicles by persons driving vehicles that resulted in the deaths of several persons (part 3 of article 286 of the Criminal Code of Ukraine). At the time of the trial, the accused was in custody.

The course of the hearing. The trial was attended by another prosecutor from a group of prosecutors in this investigation. Due to the absence of a civil defendant, the prosecutor asked the court to postpone the preparatory hearing. However, the prosecution requested a review of the application for the continued detention of the accused, as the period of detention expires before the agreed date of the

next trial. The lawyer supported the position of the prosecutor regarding the adjournment of the court session, since in his opinion it would be inappropriate to continue the consideration of the case without a civil defendant.

The prosecutor believes that they have all reasonable risks regarding the extension of the measure of restraint to the accused. Justifying his claim by the fact that there are a large number of victims who are currently not questioned, the trial has not begun, and no indictment has been announced. Evidence has not been investigated, and the accused, if not held in custody, may affect the change in evidence. In addition, there are risks to hide from the court and the defendant's failure to appear at court hearings, which will impede the consideration of this criminal proceeding. The victims and their representatives also supported the prosecutor's request.

In the process of considering the application for an extension of the measure of restraint in the form of detention, the defense said that the risks indicated by the prosecutor are not enough to extend the exceptional measure of restraint to A. Hranovskiy.

As the European Court has repeatedly noted in its decisions, when raising the question of extending a measure of restraint, not only the risks that existed at the time the measure of restraint was assigned should be given, but also new risks that could affect in any way the circumstances referred to by the prosecutor. Since the victims were questioned during the pre-trial investigation, their testimonies were recorded and can no longer be changed, and the accused cannot influence the evidence either, the lawyer believes that the prosecutor's request is not substantiated.

In addition, the lawyer stated that the accused has strong social ties, a permanent place of work and residence in Ukraine. Therefore, the defender petitioned for a more lenient measure of restraint in the form of house arrest using an electronic means of control.

The observer of the International Society for Human Rights considers it necessary to note an exceptionally attentive approach to resolving the issue of choosing a measure of re-

straint in relation to A. Khranovsky. The judge asked the prosecutor to clarify the risk of influence on the victims and witnesses indicated by him and indicated that: "We have almost 30 witnesses and one accused, is he a criminal boss?", also asked about the composition of the accused's family, his place of residence and work, specified whether he has dependents and whether he was previously convicted.

After deliberation in the deliberation room, the court ruled. According to Article 183 of the Code of Criminal Procedure of Ukraine, detention is an exceptional measure of restraint, which is applied only if the prosecutor proves that a milder measure of restraint cannot prevent the risks provided for in Article 177 of the Code of Criminal Procedure. The court found the arguments of the prosecutor regarding the influence of the accused on the victims and witnesses unfounded. Also, the prosecutor cited the risks of distorting the evidence of the prosecution, but the evidence of the prosecution is retained by the prosecution, which excludes the possibility of influencing them.

The only risk that the court considered justified is the risk of hiding from the trial. This risk is justified by the severity of the punishment that threatens the accused, the lack of dependents, and the presence of a passport that has not been handed over. Also, the civil defendant in this criminal proceeding is his employer and may be an interested party. Given the above, as well as a significant public interest, the possibility of considering the proceedings in this case within a reasonable time, the court considers that none of the milder measures of restraint can exclude possible risks with a high degree of probability and justify the further detention of the accused. The court extended to the accused A. Hranovskiy a measure of restraint in the form of detention for 60 days until May 1, 2020.

3.17 The trial of Igor Ignatov

Monitoring of the case of Igor Ignatov and Dmitry Glazunov (session 28.09.2020)

On September 28, 2020, the Supreme Anti-Corruption Court of Ukraine held an online broadcast of the case in criminal proceedings No. 1 / 991/112/19 on charges of the ex-director of the enterprise SE “Ukrhimtransammiak” Dmitry Glazunov and ex-director of PJSC “Infrastructure of public keys” Igor Ignatov of committing crimes under Part 5 of Art. 191, part 3 of Art. 209 of the Criminal Code of Ukraine, namely: appropriation, waste of property or taking possession of it by abuse of official position on an especially large scale; legalization (laundering) of property obtained by criminal means on an especially large scale.

Recall that on September 8, 2017, detectives of the National Anti-Corruption Bureau detained three people on suspicion of seizing and legalizing more than 40 million UAH of funds from the state enterprise “Ukrhimtransammiak”.

Course of the session: the court session began with the continuation of the examination of evidence in the case, in particular, documents related to the rights to an invention as an object of intellectual property. The prosecutor began describing a new volume of evidence in the case.

Lawyer T.V. Batyus filed an objection regarding the way of examining evidence in this trial, drawing attention to Art. 32 of the Code of Criminal Procedure of Ukraine, namely the fact that the examination of evidence in the case must be carried out directly by the court, which, in her opinion, is to determine the meaning of these documents for the case, and not to cite documents, which, according to her, the prosecutor was doing.

Clause 18 of the Resolution of the Supreme Court of Ukraine of January 21, 2016 in case No. 5-249x16, the court notes that the immediacy of the examination of evidence means the law’s requirement to the court to investigate all evidence collected in a specific criminal proceeding by interrogating the accused, victims, witnesses, an expert, considering physical

evidence, announcement of documents, reproduction of sound recordings, video recordings, and the like. This is the basis of criminal proceedings, which is important for a complete clarification of the circumstances of criminal proceedings and its objective decision. Immediacy of perception of evidence allows the court to properly examine and verify them (both each piece of evidence separately and in conjunction with other evidence), evaluate them according to the criteria defined in part 1 of Article 94 of the CCP, and form a complete and objective picture of the actual circumstances of a particular criminal proceeding.

In addition, information about the phone calls of the accused D.F. Glazunov, which were contained on the disk in electronic form were studied, in order to clarify his connection with the accused I.V. Ignatov.

The defense stated that the fact of establishing a telephone connection between the two accused establishes only the very fact of the existence of this connection, but in no way is proof of their joint criminal activity.

When forming the evidence base, the European Court does not prohibit the use of data obtained in the course of operational-search activities. But the national legislator, according to the ECtHR, must provide in the manner prescribed by law for the procedure for such activities: collecting the necessary information, using such information as evidence, as well as monitoring such activity (“*Ramanauskas v. Lithuania*”).

3.18 The trial of Igor Kachur

Monitoring of the case of Igor Pavlovich Kachur (hearing on 07.09.20)

On July 9, 2020, a hearing was held in the Pechersky District Court of the city of Kiev in the case of Igor Kachur, a deputy of the Talalaevsky District Council of the Chernigovsky Region of the 7th convocation, who is accused of committing a criminal offense under Part 4 of Article 190 (fraud committed in especially large size), part 2 of article 364-1 (abuse of power), part 1 of article 209 (legalization (laundering))

dering) of proceeds from crime) of the Criminal Code of Ukraine.

Due to quarantine restrictions, the observer of the International Society for Human Rights was not allowed directly into the courtroom, but the lawyer of the accused, Vitaly Gribovod, provided the ISHR with all the materials of the hearing, including the audio recording.

At this hearing, a petition for the application of a measure of restraint in the form of house arrest was considered.

In his petition, prosecutor Berezhnik substantiated the need to apply this measure of restraint with the risks provided for in paras. 1 and 4 of Article 177 of the Criminal Procedure Code of Ukraine, namely: 1) ensuring that the suspect performs the procedural duties assigned to him; 2) prevention of illegal influence on witnesses, another suspect, in the same criminal case; 3) prevention of attempts to hide from the bodies of preliminary investigation and the court.

The European Court of Human Rights in such cases shall designate that the arrest or detention of a person is lawful if it is carried out in order to bring the person before the competent law enforcement agency on reasonable suspicion of committing an offense, or where there is reason to believe that it is necessary to prevent him from committing an offense or to prevent him from fleeing after having done so.

The ECtHR also recalls that in accordance with para. 3 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the existence of reasonable suspicion cannot be a justification for pre-trial detention and must be supported by additional grounds (“*Stvrteski v. Slovakia*”).

According to the lawyer, the accusation is based on unfounded suspicions, so he asks the court to decide on the refusal to apply the measure of restraint, referring also to the state of health of his client and his need for treatment. The accused upheld the lawyer’s motion.

It should be noted that the ECtHR pays special attention to the presence or absence of relevant and sufficient grounds for imprisoning a suspect, both in the form of preliminary de-

tention and house arrest (“*Korban v. Ukraine*”; “*Navalny v. Russia*”).

Justifications that, in accordance with the case law of the ECtHR, are considered “appropriate” and “sufficient” arguments (other than reasonable suspicion) include: the risk of escaping from the investigation, the risk of putting pressure on witnesses or falsification of evidence, the risk of collusion, the risk of re-committing a crime, the risk of disrupting public order, and the need to protect the detainee (“*Buzadzhi v. Republic of Moldova*”). These risks must be properly justified, and the authorities’ justification for this cannot be abstract, general, or stereotyped (“*Merabishvili v. Georgia*”).

3.19 The trial of Petr Karpenko

Monitoring of criminal proceedings of Petr Karpenko (hearing 10/12/2020)

On October 12, 2020, the Khersonsky Court of Appeal was supposed to hear the appeal of the accused P.P. Karpenko and his lawyer Y.S. Kletsko against the decision of the Novokakhovsky city court of the Kherson region dated July 27, 2020 to extend the accused’s detention period. P.P. Karpenko is charged under Part 2 of Article 15, clause 6, Part 2 of Article 115, Part 4 of Article 187, Part 1 of Article 309 of the Criminal Code of Ukraine (attempted murder out of selfish motives, robbery and illegal production, manufacture, acquisition, storage, transportation or shipment of narcotic drugs, psychotropic substances or their analogues without the purpose of sale).

The consideration of the appeal did not take place because the accused asked the court to replace his defense counsel. He noted that the current defender “. . . does not defend him in court, does not defend his rights.”

The prosecutor indicated that the refusal of a defense attorney or his replacement should take place exclusively in the presence of a defense attorney after providing an opportunity for confidential communication (Part 2 of Article 54 of the Criminal Procedure Code of

Ukraine).

In the Resolution of the Cassation Criminal Court as part of the Supreme Court of June 7, 2018 in case No. 714/266/16-k it is indicated that, within the meaning of Part 1 of Article 412 of the Criminal Procedure Code of Ukraine restricting the right of the accused to free choice of defense counsel is a significant violation of the requirements of the criminal procedural law and the basis for canceling the court decision.

On the other hand, it should be noted that in the case of P.P. Karpenko it is not the first time a defender has been replaced. On November 7, 2019, the accused filed a petition to replace the defender appointed to him by the regional center for the provision of free secondary legal aid I.A. Zabolotny, to another free defense lawyer, arguing that his position with a lawyer in the implementation of defense is different, the accused does not agree with the opinion of the defense lawyer regarding the recognition of certain evidence in the case as inadmissible, and therefore he asks the court to accept his refusal from this defense lawyer. The refusal was accepted by the court.

At the hearing on April 17, 2020, the accused again submits a petition to replace the defender appointed by the regional center for the provision of free secondary legal aid with another, arguing that his positions with lawyer V. A. Bordun on the implementation of the defense is different, and also believes that the lawyer unprofessionally fulfills her duties, in particular, she does not submit applications that, in his opinion, should be made. The defendant's defense lawyer V.A. Bordun supported the defendant's petition, and also asked to replace his defender with another, referring to the fact that there are contradictions between her and the accused regarding the position on the defense line. The defendant's petition was granted.

And again, at the hearing on 06.02.2020, the accused filed a motion to replace the third defender, Y.S. Kletsko, to another free lawyer, since he wants to have another defense lawyer in connection with the improper performance of his duties by a lawyer who is currently de-

fending him in the aforementioned criminal proceedings. However, this time the court of first instance denied the accused and indicated that P.P. Karpenko did not explain what exactly he sees as the improper execution by lawyer Y.S. Kletsko, who provides free secondary legal aid, of his duties.

Now the accused raises the question of replacing the lawyer Y.S. Kletsko in the court of appeal, thus hindering the consideration of the appeal against the court's decision to extend the period of detention within a reasonable time.

The European Court of Human Rights (hereinafter - the ECtHR) stated: Article 6 para. 3 (c) (Art. 6-3-c) gives the right "to everyone charged with a criminal offense" to be protected by a lawyer of his choice ("Pakelli v. Germany", Para. 31). The case of "Croissant v. Germany" provides that, despite the importance of a relationship of trust between a lawyer and a client, the right of "everyone charged with a criminal offense" to be protected by a lawyer of his choice cannot be considered absolute. It is necessarily subject to certain restrictions when it comes to free legal aid, as well as where exactly the courts must decide whether the interests of justice require the accused to be defended by their appointed lawyer. When appointing defense counsel, the national courts must take into account the wishes of the accused. However, they may reject these wishes when there is appropriate and sufficient reason to believe that it is necessary in the interests of justice. (Paragraph 29).

Likewise, article 6, paragraph 3 (c), cannot be interpreted as securing the right to substitute public defender ("Lagerblom v. Sweden", paragraph 55).

Without questioning the decision of the first instance court, representatives of the ISHR are concerned about how national courts are interpreting the ECtHR practice. Thus, the Novokakhovsky City Court of the Kherson Region, in a judgment of June 1, 2020, stated that "... taking into account the decisions in the cases 'Campbell and Fell v. The United Kingdom', 'Krempovskaya v. Lithuania', the

ECtHR concluded that only those applicants who themselves have the means to pay for a defense lawyer, have the right to choose a defense lawyer of their choice”.

However, having studied the original texts of the decisions “Campbell and Fell v. The United Kingdom”, “Krempovskaya v. Lithuania”, we did not find such categorical positions. Moreover, the ISHR considers that such a wording may violate the right of “everyone charged with a criminal offense” to be protected by a lawyer of his choice.

Each case of filing an application to replace a lawyer is unique and should be examined for the proper performance of the lawyer’s duties. For example, in the case of “Artico v. Italy” (paragraph 33), the ECtHR found a violation of Article 6 para. 3 (c) of the Convention, as the applicant never used the services of a lawyer. From the very beginning, the lawyer stated that he could not act. He referred, first, to the existence of other obligations, and then to the state of his health. In this case, the application of the accused should be considered with special care, because we are talking about the inaction of a lawyer and the impossibility of exercising the right to legal assistance.

3.20 The trial of Gennady Kernes and others

Monitoring of the case of Kernes G.A., Blinnik V.D., Smithsky E.N. (session 01/31/20)

On January 31, the Poltava Court of Appeal held a regular court hearing on the case of a Ukrainian politician, a mayor of the city of Kharkov, Gennady Kernes, accused of illegal, by prior conspiracy by a group of people, imprisonment of two people with torture, as well as with the threat of murder.

In connection with the reform of the prosecution authorities, some changes occurred in the composition of the participants: the prosecution was represented at the hearing by the prosecutors of the Office of the Prosecutor General B. Berkut and Volonin V. To confirm the authority, the court was given the decision of the

First Deputy Prosecutor General of Ukraine to change the group of prosecutors. The defense made a statement about the impossibility of the participation of these prosecutors, since in Article 3 of the Criminal Procedure Code of Ukraine it is determined that the head of the prosecutor’s office is the Prosecutor General of Ukraine, the head of the regional prosecutor’s office and their first deputies and deputy, who act within their authority.

Moreover, as the lawyer of the accused Kernes claimed, in accordance with paragraph 1.2 of the Order of the Office of the Attorney General No. 367 of 12/28/2019, the first deputy does not have the authority to change the group of prosecutors. Thus, according to the defense, prosecutors Berkut B. and Volonin V. do not have enough authority to represent the public prosecution at this hearing.

The court continued consideration of the appeal with the participation of state prosecutors, considering that the grounds for their authority were sufficient.

At the hearing, the appeal was considered in essence. Since the prosecution has already submitted the arguments of its appeal, the court session began with the announcement of the objection of the defense.

The essence of the stated objections was as follows.

The court of first instance ruled that it closed the proceedings in connection with the refusal of state charges. The Kievsky district court made this conclusion, since the prosecution did not appear at 7 consecutive court hearings. A group of prosecutors consisted of 19 prosecutors from the General Prosecutor’s Office of Ukraine. To confirm the validity of the reasons for the inability to attend court hearings, only 2 sick leave certificates were submitted. At the time of the impugned decision, the judicial review lasted for more than 3 years.

The prolonged absence of prosecutors at court hearings, given the mandatory appearance of them, in the opinion of the defense is a violation of the right to a fair trial.

It should be noted that the ECtHR assesses the reasonableness of the length of the trial in

accordance with the circumstances of the case and taking into account the criteria established in its case law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities ("Keilo v. France").

The International Society for Human Rights does not undertake to evaluate the decision of the court of first instance, however, it considers that the behavior of the prosecution in this criminal proceeding in the Kievsky district court of Poltava directly contradicts the objectives of the criminal proceedings, primarily in terms of ensuring a full and speedy judicial review (Article 2 CPC). In addition, according to Article 3 of the Code of Criminal Procedure, the prosecutor's office, supporting a public prosecution, must prove the prosecution before the court in order to ensure the criminal liability of the person who committed the criminal offense. In fact, none of the 19 prosecutors (included in the group) appeared at 7 consecutive court hearings, which was regarded by the court as the prosecutor's refusal from the charge.

It should be noted that the prosecutor's office is a government body that has the ability to directly influence the opening of criminal proceedings, including with regard to judges and to exercise procedural supervision. Thus, the system of interaction between the judiciary and the prosecutor's office has the prerequisites not only of procedural influence, but also of possible pressure on the court.

So, on August 10, 2018, on the day the impugned decision was made to close the Kernes proceedings, at a briefing, representatives of the Prosecutor General's Office of Ukraine announced the opening of criminal proceedings against Judge Antonov under Art. 375 of the Criminal Code of Ukraine, which provides for liability for a deliberately unlawful sentence, decision or determination. The prosecution indicated that the court, having closed the proceedings, deprived them of the right to speak in the debate. In addition, the court was not requested to refuse the charge.

The Poltava Court of Appeal upheld the complaint of the prosecutor. The case against

the accused Kernes G.A., Blinnik V.D., Smitsky E.N. sent to the trial court for a new consideration.

Monitoring of the case of Kernes G.A., Blinnik V.D., Smitsky E.N. (hearing 02/28/20)

On February 28, in the Kievsky district court of Poltava, a regular court session was held on the case of a Ukrainian politician, a Mayor of the city of Kharkov, Gennady Adolfovich Kernes, on charges of illegal deprivation of liberty of two people by a group of people, by prior conspiracy to use torture, as well as with the threat of murder.

On this day, a preparatory hearing was scheduled for the case.

The defendants E. Smitsky and V. Blinnik appeared in court. Accused Gennady Kernes did not arrive at the hearing, citing poor health. The defendants did not appear at the hearing, in connection with which they asked to postpone the consideration of the case.

The court granted the petition of the defense and rescheduled the hearing until March 20, 2020.

Recall that earlier this case was already considered by one of the judges of the Kievsky District Court of Poltava - A. Antonov, who on August 10, 2018 issued a decision to close the proceedings due to the repeated failure of the prosecution to appear at court hearings. Which, subsequently, led to statements by the highest authorities on the opening of criminal proceedings against a judge and his subsequent dismissal.

In this regard, the International Society for Human Rights considers it necessary to pay increased attention to this case from international public institutions, since it suggests the possibility of repeated abuse by the prosecutor's office of their rights and powers, as well as psychological pressure on the board of the court. The European Court of Human Rights in the case of "SOVTRANSVTO v. Ukraine" notes that the Ukrainian authorities, acting at the highest level, repeatedly intervened in the proceedings. Regardless of the reasons put forward by the Government to justify such in-

terventions, the Court considers that, in view of their content and the manner in which they were made, they were “ipso facto” incompatible with the concept of an “independent and impartial court” within the meaning of Article 6 § 1 of the Convention.

ECtHR sees no reason to speculate on what effect such interventions could have had on the course of the proceedings in question, but considers that in the circumstances of the present case the applicant company’s concerns about the independence and impartiality of the tribunals were not unfounded. On the part of the executive branch of the state, such interventions, however, indicate a lack of respect for the judicial office itself.

3.21 The trial of Anton Kitaev

Monitoring of the Anton Kitaev case (hearing on 08.19.20)

On August 19, in the Lubensky district court of the Poltava region, a trial was held in the case of Anton Kitaev, who is accused of illegal sale of drugs and organizing a place for drug use.

It should be noted that the report was prepared by the observer of the International Society for Human Rights from audio recording provided by the lawyer.

According to the defense lawyer V. Gribov, during the entire trial, the court did not satisfy a single petition of the defense, while all the petitions of the prosecution were accepted by the court.

Even at the preparatory session, the defense asked to broadcast the trial on the website of the Judiciary of Ukraine. The court rejected this request, stating that the case was ordinary.

In subsequent court hearings, the defense also filed motions, which were refused.

In particular, from the first hearing, the lawyer argued not only about the presence of provocation (incitement) on the part of the investigative bodies, but also the possible falsification of materials.

The ECtHR has repeatedly insisted on the duty of the court to check the facts related to

a possible provocation from the moment the defense declared about possible incitement.

The ECtHR judgment “Ramanauskis v. Lithuania” states that “the court, in order to establish whether A.Z. and V.S. performed only ‘passive investigation of illegal activities’, must take into account that there is no evidence in the case confirming that the applicant had previously committed crimes, including those related to corruption; according to the recordings of telephone conversations, the applicant met A.Z. on several occasions at the initiative of the latter (this fact, obviously, refutes the arguments presented by the Government that the law enforcement bodies never put pressure on the applicant or resorted to threats). On the contrary, through contacts established at the initiative of A.Z. and V.S., the law enforcement authorities clearly persuaded the applicant to commit illegal actions, although, apart from rumors, there was no objective evidence to suggest that the applicant was engaged in illegal activities.”

These considerations are sufficient to substantiate the conclusion that the actions of law enforcement officers went beyond the limits of a passive investigation of existing illegal activities.

As the applicant’s submissions were not entirely unfounded, it was the prosecutor’s office who had to prove that there was no incitement. In the absence of such evidence, the domestic courts were obliged to analyze the circumstances of the case and take appropriate steps to establish the truth, as well as to find out whether there was incitement. If this fact was proved, they had to act in accordance with the provisions of the Convention. However, the authorities denied that they had been incited by the police and the court did not take any steps to verify the applicant’s submissions. In particular, the court did not even try to find out the role of each of the main characters, for example, the reasons for the personal initiative of A.Z. appeal to the applicant, despite the fact that the latter’s conviction was based on evidence obtained as a result of the incitement he complained about.

In this case, the Lubensky the court not only

did not begin the verification of the facts indicated by the defense, but also, in the opinion of the lawyer, essentially interfered with the adversarial nature.

The defense, in order to confirm the facts of incitement and actions on the part of law enforcement agencies, applied for temporary access to the data of the mobile operator about the incoming and outgoing phone calls of Kitaev. According to the defense lawyer, the case file contains only information about several calls for almost 9 months of the investigation, although according to the defense, the witness called A. Kitaev almost every day. This indicates that the pre-trial investigation body selectively provided the court with evidence, although it was obliged to provide everything.

The court rejected the defense motion, motivating it with the premature filing, although the criminal procedural legislation does not contain such grounds.

At the hearing, prosecution witness Tumanov, who carried out the procurement, was questioned. The information about the witness has been changed and contains state secrets. Thus, the judge had to have access to state secrets.

In view of these circumstances, the prosecution filed a motion to interrogate Tumanov outside the courtroom with a change in voice and personal data. And the defense lawyer demanded that the Lubensky court establish his identity before questioning the witness, as indicated in Article 352 of the Criminal Procedure Code of Ukraine (according to part 1 of Article 352 of the Criminal Procedure Code of Ukraine, before interrogating a witness, the presiding judge establishes information about his identity and clarifies the relationship between the witness and the accused and the victim).

However, the court decided to interrogate Tumanov from the premises of the Poltava Court of Appeal. According to the lawyer, such a situation may entail the impossibility of properly assessing the testimony of the main witness in the case.

In connection with the above circumstances, the defense declared the disqualification of the

judge of the Lubensky court Datsenko V.N.

In §§66-70 of the “Mironenko and Martynenko v. Ukraine” case, the ECtHR indicated that, in accordance with the Court’s constant case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined in accordance with a subjective factor, in which the personal beliefs and behavior of a particular judge, that is, whether the judge had any personal bias or prejudice in the case; and in accordance with an objective test, that is, by establishing whether the tribunal itself, and, *inter alia*, its composition, offered sufficient safeguards to rule out any legitimate doubts about its impartiality.

As far as the subjective factor is concerned, the judge’s personal impartiality should be assumed until proven otherwise.

On the objective side, it is necessary to determine whether, in addition to the judge’s behavior, there are established facts that may raise doubts about his impartiality. This means that in deciding whether there is a legitimate reason to fear that a particular judge does not have impartiality in a given case, the position of the person concerned is important but not decisive. The decisive factor is whether these fears can be considered objectively justified.

In this respect, even appearances can have a certain meaning, or, in other words, “justice must not only be done, it must also be seen.” What is at stake is the credibility that the courts in a democratic society must inspire in the public.

The court refused to satisfy the request for recusal and interrogated witness Tumanov without establishing his identity before the interrogation.

3.22 The trial of Marina Kovtun

Monitoring the case of Marina Kovtun (01.22.2020)

01/22/2020 in the Kharkov Court of Appeal, a hearing was held on the complaint of M. Kovtun against the decision of the Kiev district court in Kharkov, by the verdict of which she

was found guilty of criminal offenses under part 1 of article 263, part 5 of article 27, part 2 Article 258 of the Criminal Code of Ukraine. On the totality of crimes, she was sentenced to 11 years in prison with confiscation of all property.

The hearing was attended by the prosecutor, defense, assistant defense, observers, secretary and the panel of judges (Lyushnya A.I., Savchenko I.S. and Yakovleva V.S.).

The presiding judge stated that the judge V. Yakovleva already participated in this criminal proceeding during the pre-trial investigation, considering the appeal of the lawyer Shadrin A.E. to the decision of the investigating judge on the extension of the terms of detention. Therefore, according to Article 76 of the CCP of Ukraine, Judge Yakovleva V.S. does not have the right to take part in the consideration of this case. On this basis, the judge recused herself. The prosecutor and the defense did not object to self-recusation. The court, having conferred, decided to satisfy the statement of self-recusation and set a new date for the hearing on 02.20.2020.

Cases, which are characterized by a long period of their consideration in the courts of first instance, and, most often, by long periods of detention in custody, always go through the stage of self-recusal of judges on appeal.

In such situations, it is important to keep in mind the reasonable time frames for considering the case. According to the ECtHR, “requiring a hearing within a ‘reasonable time’, the Convention for the Protection of Human Rights emphasizes the importance of administering justice without delay, which could jeopardize its effectiveness and credibility” (“Vernillo v. France”). Marina Kovtun has been in custody for more than five years.

Representatives of the ISHR continue to monitor the case of Marina Kovtun and hope that the consideration of the case in the appeal will not be delayed, as happened earlier in other proceedings. For example, in the case of Mehti Logunov, the consideration of the appeal against the verdict was postponed for more than a year due to the lack of judges, and later because the court hall was not ready

to hear such case.

Monitoring the case of Marina Anatolyevna Kovtun (02.20.2020)

02/20/2020 a hearing was held in the Kharkovsky Court of Appeal in the case of Marina Kovtun, who was convicted of criminal offenses under part 1 of article 263, part 5 of article 27, part 2 of article 258 of the Criminal Code of Ukraine by decision of the Kievsky district court in Kharkov. For the totality of crimes, she was sentenced to 11 years in prison with confiscation of all property.

The session was attended by the prosecutor, the defense, observers, the secretary and the panel of judges in full force, namely - A. Lyushnya, I. Savchenko. and M. Savenko.

The presiding judge found that Kovtun Marina was not delivered to the courtroom. The judge also stated that, according to a report from a state institution, the Kharkov Detention Center, Marina Kovtun was sent to Buchatsky correctional colony No. 85 for medical treatment. Later, a message also came from the detention center that the accused would not be brought to the Kharkovsky Court of Appeal on January 22, 2020, since she was in a penal colony. However, the message from the penitentiary facility dated January 23, 2020 indicates that the accused, after undergoing treatment on December 28, 2019, was transferred to a pre-trial detention center. In turn, according to the statement of the Kharkov remand prison as of January 28, 2020, Kovtun Marina was not returned to the pre-trial detention center and her whereabouts are currently unknown.

Also, the Kharkov Court of Appeal received a letter in electronic form from the accused, in which she indicates that she is in the LPR (uncontrolled by the government part of Eastern Ukraine) and requests the criminal proceedings in her case to be closed.

In accordance with the information provided, the prosecutor filed a request for instructions to the pre-trial investigation authorities to establish the location of the accused, in accordance with Art. 333 CCP of Ukraine. The lawyer supported the petition and, as a result,

the court decided to instruct the pre-trial investigation authorities to establish the location of the accused before 04.16.2020 and deliver her to the hearing.

3.23 The trial of Sergey Kozak

Monitoring of criminal proceedings of Kozak S.S., Mitkalik V.A., Gumenyuk M.D., Gurko A.F. (hearing 04.24.20)

On April 24, 2020, a hearing was held in case No. 157/146/18 on charges of Sergei Stepanovich Kozak (part 2 of article 199, part 2 of article 186, part 1, 2 of article 190 of the Criminal Code) in the Lutsk City Court of the Volynsky Region Ukraine), Gurko Alexander Fedorovich (under part 2 of article 199, part 2 of article 186, part 2 of article 190 of the Criminal Code of Ukraine), Mitkalik Vitaliy Anatolyevich and Gumenyuk Maria Dmitrievna (according to part 2 of article 199 of the Criminal Code of Ukraine). The indictment was filed to the court on February 20, 2018.

During the trial, the court and the participants watched the video provided by the prosecutor. As a result of the review, it was attached to the case file.

It is worth noting that on March 23, 2020, the accused Alexander Gurko (who is in custody) and Maria Gumenyuk (under house arrest) were extended the terms of measures of restraint. The judgment was reasoned as follows: given the fact that Gurko A.F. accused of committing several, including serious crimes, and M. Gumenyuk accused of committing a crime, which also belongs to the category of serious crimes, in order to ensure the proper conduct of the accused during the judicial investigation, the court concluded that the prosecutor's motions on both defendants must be satisfied. Thus, the court extended the measure of restraint to the accused Gurko Alexander in the form of detention by 60 days, with the possibility of making a bail of 80,000 hryvnias, and for the accused Gumenyuk Maria the court elected the measure of restraint in the form of a night house arrest for a period of 2 months, with the possibility of leaving her place of res-

idence during working hours, i.e. from 08:00 a.m. to 8:00 p.m. daily.

However, upon reviewing the texts of the court rulings by the observer of the ISHR, it turned out that they did not mention the risks on the basis of which the terms of the measures of restraint were extended. The court referred solely to the gravity of the crimes.

The European Court of Human Rights has often found a violation of Art. 5 of the Convention in cases where the national courts continued to detention, referring mainly to the gravity of the charges and using template language, without even considering specific facts or the possibility of alternative measures ("Kharchenko v. Ukraine", paras. 80-81; "Tretyakov v. Ukraine" para. 59). Also, in the case of "Rudenko v. Ukraine" (para. 66), when extending the terms of detention, the domestic courts mainly referred to the gravity of the charges against him and the likely risk that he would evade the investigation, not properly assessing no other circumstances of his particular case, and the Court considers that the grounds for this content were not "relevant and sufficient" and found a violation of Article 3 § 3 5 of the Convention. From this it follows that in the issue of extending measures of restraint, Alexander Gurko and Maria Gumenyuk could have committed a violation of Article 5 of the ECtHR. The International Society for Human Rights has repeatedly noted the need to argue for the reasons for the extension of measures of restraint by the court, especially the exceptional measure of restraint - detention. Automatic (without specifying and justifying the risks stipulated by the CPC) extension of the measure of restraint is one of the most common trends in violation of the right to a fair trial in Ukraine. And the random selection of cases for monitoring from video broadcasts (published on the official website of the judiciary of Ukraine), due to the limited ability of observers to personally attend court hearings, only confirms the magnitude of this problem.

Monitoring of criminal proceedings of S.S. Kozak, V.A. Mitkalik, M.D. Gumenyuk, A.F. Gurko (hearing 06/01/2020)

On June 1, 2020, the Lutsk City District Court of the Volynsky Region continued the hearing of case No. 157/146/18 on charges of S.S. Kozak under Part 2 of Art. 199, part 2 of Art. 186, part 1, 2 art. 190 of the Criminal Code of Ukraine, A.F. Gurko under Part 2 of Art. 199, part 2 of Art. 186, part 2 of Art. 190 of the Criminal Code of Ukraine, V.A. Mitkalik and M.D. Gumenyuk under Part 2 of Art. 199 of the Criminal Code of Ukraine.

The monitoring of the court session was carried out through video broadcasting of the court session on the website of the Judiciary of Ukraine.

The broadcast began half an hour before the start of the trial itself. From the very beginning, one of the accused - Vitaly Anatolyevich Mitkalik behaved aggressively towards everyone present in the courtroom. The reason for this behavior has not been established.

The convoy and the lawyer took all possible measures to calm him down. Several times they brought him water; the lawyer gave him a sedative. Later, a conflict arose between Mitkalik V.A. and Gurko A. F. In the glass box they started a fight. The convoy had to forcefully separate the accused and take out V.A. Mitkalik from the courtroom. All half an hour before the start of the court session, the accused shouted, used obscene language, beat and kicked the walls of the glass box.

This behavior, among other things, lead to a delay in the consideration of criminal proceedings. And not only for Mitkalik, but also for the other accused. The hearing on June 01, 2020 was supposed to be a continuation of the judicial debate.

A.F. Gurko filed a motion to postpone the hearing, while S.S. Kozak objected to granting the petition. As a result, the consideration of the case was postponed to June 12, 2020 (11:30 am).

3.24 The trial of Leonid Kozhara

Monitoring trial in the case of Leonid Kozhara (court hearings of March 26-27)

March 26-27, court hearings were held in the Shevchenkivskyi court of Kiev to select a measure of restraint to former Foreign Minister Leonid Kozhara, who is suspected of the murder of Sergey Staritsky (former head of the Ukrainian television station "Inter").

The course of the pre-trial investigation. The preliminary version of the police was suicide. According to investigators, the shot was fired at the suspect's house with a pistol registered on him. Further, as agreed with the prosecutor's office, the criminal proceedings were re-qualified from suicide to intentional murder - part 1 of article 115 of the Criminal Code of Ukraine. On March 25, L. Kozhara was given a notice of suspicion of intentional murder of S. Staritsky.

In connection with the introduction of quarantine on the territory of Ukraine, ISHR observers monitored court hearing using the official online broadcast on the judicial authority's website.

At the beginning of the trial, the suspect's lawyers petitioned for the hearing to be held behind closed doors, since the case has a significant public outcry, and information that should not be distributed throughout the country will be announced during the hearing. Prosecutors supported the defense. The court partially granted the request and decided to conduct a closed-door interrogation of witnesses. Before hearing the prosecution's request for a measure of restraint in the form of detention, the defense of L. Kozhara provided the court with information that could positively characterize the suspect, namely, the lawyers listed all the professional merits of their client, told about his family and parents who are on his care, and also noted that immediately after the death of S. Staritsky their client canceled all his working trips abroad, tried in every possible way to facilitate the investigation of the case, and also notified pre-trial investigation of his whereabouts.

In addition, lawyers noted that the wife of the victim tried to file an application for a criminal offense, which described the mechanism of the crime, but the investigators refused to accept it. The rhetoric of the defense was to show their client in the best possible light and to apply for a measure of restraint against him in the form of a personal obligation. After the lawyers spoke, the prosecution read out its request for a measure of restraint in the form of detention. The prosecutor substantiated the need to apply an exceptional measure of restraint with the following risks:

1. Risk of hiding from pre-trial investigation bodies and the court. Prosecutors justified that by the fact that L. Kozhara is suspected of committing a particularly serious crime, which means that it is likely that he will try to avoid punishment by any means. ISHR experts have repeatedly emphasized that the gravity of the alleged crime and the severity of the possible punishment alone cannot justify the risk of escape. The prosecution should also refer to other evidence that could confirm the existence of the above risk. The ECtHR has taken a similar position in many of its decisions. So, in the case of “Panchenko v. Russia”, paragraph 106, the ECtHR emphasized that the risk of escape should not be assessed only on the basis of the severity of the punishment that may follow. It should be determined taking into account a number of other relevant factors that can either confirm that there is a danger of escape, or show that it is too small and there is no need for pre-trial detention.

2. Risk of unlawful pressure on victims and witnesses. In order to justify this risk, prosecutors requested the interrogation of one of the victims, since the latter wanted to talk about attempts of pressure on him from the suspect. It should be noted that the court did not grant this motion.

3. The risk in other ways impedes the pre-trial investigation. The prosecutors justified this risk by the fact that the suspect committed acts to conceal the allegedly committed crime, initiating the appearance of committing suicide by the victims. Note that the prosecution did not provide evidence for this, although

the danger that the suspect would interfere with the proper conduct of the pre-trial investigation cannot be assessed abstractly but must be supported by factual evidence (“Bekchiev v. Moldova”, para. 59).

The suspect’s lawyers noted that they consider the suspicion unfounded and the risks referred to by the prosecutor unconfirmed. In addition, the defense claimed that their client could only hold the weapon but could not shoot. Arguing their words, the lawyers referred to 4 examinations, confirming, in their opinion, that Leonid Kozhara did not shoot a pistol.

The court granted the prosecution’s petition, having decided to detain the suspect in the courtroom, nevertheless establishing the possibility of release on bail in the amount of about 14.1 million hryvnias, although the prosecutor’s office requested the arrest of the ex-minister without bail.

If Leonid Kozhara makes a bail, then he will be obliged not to leave the place of residence, to appear at the request of the prosecutor or investigator, and to surrender documents for traveling abroad.

3.25 The trial of Maksim Krivosh

Monitoring of the Maksim Krivosh case (hearing on July 23, 2020)

On July 23, 2020, in the Lutsky City District Court of the Volynsky Region, a case was considered in criminal proceedings number 12020030000000540 on the suspicion of Maxim Stepanovich Krivosh of committing: • taking and keeping persons as hostages with the threat of exterminating people, incl. in relation to a minor, that is, in the commission of a crime under Article 147, Part 2 of the Criminal Code of Ukraine; • a terrorist act, that is, the use of weapons and the commission of an explosion, which created a danger to human life and health, with the aim of violating public safety, intimidating the population, influencing the commission of actions by government officials and drawing public attention to his

political views, as well as the threat of committing these actions for the same purposes, that is, in the commission of a crime under Article 258, Part 1 of the Criminal Code of Ukraine; • encroachment on the life of a law enforcement officer in connection with the performance of his official duties, that is, in the commission of a crime under Article 348 of the Criminal Code of Ukraine; • illegal possession of firearms and explosives, that is, in the commission of a crime under Article 263, part 1 of the Criminal Code of Ukraine.

Criminal proceedings on charges of M.S. Krivosh considered by the investigating judge of the Lutsky city district court of the Volynsky region Sivchuk A.S. The International Society for Human Rights is starting to monitor this case.

The course of the hearing. The senior investigator for the Internal Affairs Directorate of the Ukrainian secret service (SBU) applied to the Lutsky City District Court of the Volynsky Region with a petition (agreed with the prosecutor in criminal proceedings - the Deputy Prosecutor of the Volynsky Region A.Y. Semenuk) on the application of a measure of restraint in the form of detention for a period of 60, arguing that the latter is suspected of committing crimes, which, according to Article 12 of the Criminal Code of Ukraine belong, in particular, to the category of grave and especially grave crimes, does not work, does not have an official source of income, as well as a permanent place of residence. Moreover, investigator I.P. Lyashuk referred to the presence of risks provided for by Article 177 of the Criminal Procedure Code of Ukraine, namely, that being at large, a suspect can hide from the pre-trial investigation authorities and the court, illegally influence victims, witnesses, experts in criminal proceedings, interfere with criminal proceedings in any other way, commit other criminal offenses.

Prosecutors O.S. Kostyuk and V.M. Starchuk fully supported the petition and asked the court to fully satisfy it. The prosecution noted that the crimes of which M.S. Krivosh is suspected were committed with the use of violence and the threat of its

use against a significant number of victims, including law enforcement officers, using weapons, ammunition, explosive devices and substances.

The suspect Maksim Krivosh at the court session refused to express his position regarding the stated petition of the investigator. His lawyer, S.A. Timozhinsky asked the court to rule a legal procedural decision and asked to take into account the fact that the risks indicated in the investigator's petition are subjective. The defense lawyer asked to pay special attention to the strong social ties of the suspect, namely, the presence of a wife and a minor son, who is in his custody.

According to the lawyer, in the petition for the selection of a measure of restraint, the investigator mainly refers to the gravity of the charge.

The International Society for Human Rights draws attention to the fact that the ECtHR in its decisions expressed its disagreement with the fact that the judicial authorities often refer to the likelihood that a severe punishment may be imposed on the applicant, given the gravity of the crimes of which he was accused, thereby turning attention that the severity of the charge alone cannot justify long periods of detention. . . ("Moskalenko v. Ukraine" para. 36). Nevertheless, the severity of the charges brought and the risk of evasion from the investigation may be grounds for issuing a decision on the selection of a measure of restraint for the first time ("Buryaga v. Ukraine"). The mere existence of a reasonable suspicion that the detained person has committed a crime is a condition sine qua non for the legality of the detention ("Klyakhin v. Russia").

The ECtHR reiterates that any deprivation of liberty, other than compliance with one of the exceptions specified in subparagraphs (a) - (f) of paragraph 1 of Article 5 of the Convention, must also be "lawful" if the "lawfulness" of the detention and, in particular, compliance "The order established by law" are in question, the Convention, in fact, refers to national legislation and establishes the obligation to ensure compliance with its substantive and procedural rules (judgment in the cases "Erkalo

v. The Netherlands”, para. 52, “Baranovskiy v. Poland”, para. 50).

In assessing the lawfulness of the detention, the Court must also find out whether the domestic law itself is in line with the Convention and, in particular, with the general principles set out in the Convention or arising from it. “The quality of the law” means that when national legislation permits deprivation of liberty, it must be sufficiently accessible, clear and predictable in its application to avoid any risk of arbitrariness. The Convention’s standard of “legality” requires that all legislation be formulated with sufficient clarity to enable a person, if necessary, through the provision of appropriate advice in the appropriate circumstances, to foresee the consequences that a particular action might have. When it comes to deprivation of liberty, it is important that national legislation clearly defines the conditions of detention (“Del Rio Prada v. Spain”, para. 125).

The European Court of Human Rights argues that the requirement of legality cannot be enforced solely by compliance with national law, which itself must comply with the Convention (“Plesho v. Hungary”, para. 57), so that deprivation of liberty can be generally lawful from the point of view of domestic law, but, arbitrary, based on the content of the Convention, thereby violating its provisions.

It follows from this that the court’s decision to take into custody or to extend the period of detention will be justified not only if it is in accordance with national legislation, but also taken into account the provisions of the Convention and the decisions of the European Court.

The court, having consulted, decided to satisfy the investigator’s petition, to apply to the suspect M.S. Krivosh measure of restraint in the form of detention for a period of 60 days, the period of which is calculated from the moment of actual detention from 9:30 pm 07/21/2020 to 09/18/2020 inclusive, without determining the amount of the bail.

3.26 The trial of Konstantin Kulik

Monitoring of the trial in the case of the prosecutor Konstantin Kulik (court hearing 04/02/2020)

On April 2, 2020, a preparatory hearing was held in the Supreme Anti-Corruption Court in the case of the prosecutor Konstantin Kulik, who is charged with illegal enrichment under part 2 of article 368-2 of the Criminal Code of Ukraine.

On October 7, 2016, National Anti-Corruption Bureau’s (NABU) detectives completed a pre-trial investigation in criminal proceedings on the fact of illegal enrichment (part 2 of article 368-2 of the Criminal Code of Ukraine) by Konstantin Kulik. According to NABU, from 2011 to 2015, while serving in the prosecution authorities, Kulik made a profit of more than 1 million 670 thousand hryvnias. In addition, during the same period, Kulik’s expenses exceeded his income by 2.6 million hryvnias and amounted to about 3.4 million hryvnias. The case was sent to the Golosevsky court of Kiev. In the spring of 2019, prosecutors filed a motion to close the criminal proceedings, substantiating it with the fact that the Constitutional Court of Ukraine, on the proposal of 59 members of the Parliament, by its decision of January 29, 2019 declared part 2 of article 368-2 unconstitutional (recall that Kulik was charged with this article), prosecutors referred to paragraph 4 of Part 1 of Art. 284 of the Code of Criminal Procedure of Ukraine, according to which criminal proceedings should be closed in the event of the entry into force of a law which abolished criminal liability for an act committed by a person. The Golosevsky court did not approve the application, since the Code of Criminal Procedure of Ukraine does not give it the authority to close criminal proceedings at the stage of judicial review on the basis of this circumstance. So, the case in the Golosevsky court “was motionless” until the beginning of 2020. In other words, for almost a year the district court considered criminal proceedings on which the decision is obviously clear - an acquittal, since it is not

possible to accuse a person according to an article recognized as unconstitutional. ISHR experts express their concern about this fact, since national courts are extremely overloaded, by opening the judicial authority's website, you can see that many court hearings are scheduled for 2021-2022. The court does not have the opportunity to study dozens of volumes of case materials, to hold court hearings only because the legislator has not thought out the mechanism for closing criminal proceedings on the basis of a decision of the Constitutional Court at the stage of judicial consideration.

In the case of Kulik, it was possible to get out of the vicious circle formed in connection with a conflict in national legislation. On September 5, 2019, the Supreme Anti-Corruption Court (HACC) began its work, under whose jurisdiction all corruption offenses fall, in particular, the Kulik case. The HACC reviews cases from the very first stage, that is, from the preparatory hearing (at which the court has the right to decide on the closure of the criminal proceedings). According to the report on the auto-distribution of cases between judges, on January 17, 2020, a board was determined in the HACC to consider the case of K. Kulik.

So, on April 2, during a preparatory hearing, the prosecutor filed a motion to close the criminal proceedings, citing the unconstitutionality of the article imputed to the accused. The defense supported this request, in addition, it filed its request to cancel the arrests of the bank accounts of the accused. The court granted all the applications submitted and, by its decision, closed the criminal proceedings.

ISHR experts would like to express their concern about the situation for several reasons.

Firstly, once again, the ISHR in the process of its monitoring faces significant gaps in national legislation: the lack of a mechanism for closing criminal proceedings at the stage of judicial review due to the recognition of a norm as unconstitutional. Earlier, we noted the unresolved issue at the legislative level of the exchange within the "Normandy format" (the case of ex-Berkut officers) and the use of the agreement on the provision of international

legal assistance in criminal cases in the case of V. Yanukovich.

Secondly, the closure of the criminal proceedings with reference to Clause 4, Part 1, Article 284 of the Criminal Code of Ukraine is doubtful, since it refers to the entry into force of the law, which repeals criminal liability, and not the decision of the Constitutional Court. The latter is a body of constitutional jurisdiction and ensures the supremacy of the Constitution of Ukraine but does not issue laws. The legislative function is entrusted to the Verkhovna Rada (Parliament) of Ukraine, which means that the decision of the Constitutional Court does not fall under clause 4 part 1 of article 284 of the Criminal Code of Ukraine. Consequently, the legislator needs to resolve this issue by making appropriate amendments to the Code of Criminal Procedure of Ukraine and provide the courts with the opportunity to operate using the rules that govern a particular legal fact, rather than confuse the courts due to legislative gaps. Note that only the substantive law norms are not retroactive, this principle does not apply to procedural legislation. That confirms the case-law of the ECtHR. Thus, the Court found that the rules on retroactive effect of the law only apply to provisions defining crimes and the corresponding punishments. As a general rule, they are not applicable to procedural legislation, the direct application of which in accordance with the principle of *tempus regit actum* (the duration of the law) seems appropriate to the Court ("Skoppola v. Italy" No. 2, paragraph 110).

3.27 The trial of Kulish Natalya

Monitoring the case of Kulish Natalya (hearing 02/04/2020)

02/04/2020, in the Zaliznychny District Court of the city of Lvov, a criminal case was examined in case number 12019140000000394 on charges of Natalya Kulish in an attempt to sell her minor daughter to the Czech Republic for sexual slavery (under part 3 of article 149 of the Criminal Code of Ukraine).

Criminal proceedings on charges of Kulish N. considered collectively. The board is composed of three judges A. Kirilyuk, N. Rumilova, A. Liush. The court hearing in this case was scheduled for 4 pm. However, it began at 4:25 pm in connection with the lateness of the lawyer of the accused Kulish N. - Savaydy M.

During the hearing, Natalia Kulish filed a motion to replace the lawyer due to the fact that, in her opinion, the lawyer Savaida M. defended her improperly. According to the accused, the lawyer did not provide her with a copy of the case file, did not arrive at meetings in the remand prison, and did not discuss with her the legal position of the defense line.

The court granted the request of the accused Kulish N. and in this regard, adjourned the hearing to 02.17.2020 at 11 am.

The European Court considered a similar situation when the applicant in the “Zagorodniy v. Ukraine” case claimed that the activities of the lawyers appointed in his case had been ineffective. In the context of the decision in this case, the ECtHR noted that although the right of every person accused of a criminal offense to effective defense by a lawyer is not absolute, it is one of the main foundations of a fair trial. A person against whom criminal charges have been brought forward and who does not wish to defend himself in person must be able to avail himself of legal assistance of his own choosing.

The fact that for some time the accused, in her opinion, was provided with improper assistance from a lawyer, may indicate a violation of one of the basic principles of a fair trial - the right to defense.

A fair trial is the procedural right of every person whose rights are violated, not recognized or contested. The essence of this right is that, firstly, it is a right to protect other rights, and secondly, this right has its own self-sufficient value, as an integral element of the rule of law.

In particular, in the case of “Chutura v. Croatia”, the ECtHR concluded that the right to a fair trial was violated because the lawyer took part in the case as a passive observer, thereby not providing effective legal representation, in

violation of the Convention.

Monitoring the case of Kulish Natalya (session 02.17.2020)

02/17/2020, in the Zaliznychny District Court of the city of Lvov, the case was examined in criminal proceedings No. 12019140000000394 on charges of Natalya Kulish in attempting to sell her minor daughter to the Czech Republic for sexual slavery (under part 3 of article 149 of the Criminal Code of Ukraine).

Criminal proceedings on charges of Kulish N.I. considered collectively, composed of three judges: Kirilyuk A.I., Rumilova N.M., Liush A.I. The trial in this case was scheduled for 11:00 am but began with a delay of 45 minutes.

In connection with the petition of the accused stated at the last court hearing, Kulish N.I. (to replace the lawyer and provide her with another lawyer), the lawyer from the Center for Free Legal Assistance Sidoruk Elena arrived at the hearing.

As the term of detention of the accused expires on 02.24.2020, the prosecutor S. Krish-tanovich filed a motion to extend the measure of restraint in the form of detention for 60 days with the possibility to make a bail in the amount of UAH 192,000. He stated that the risks provided for by Art. 177 of the Code of Criminal Procedure of Ukraine (which were the basis during the application of the measure of restraint) did not decrease, but the grounds for application with respect to the accused Kulish N.I. a milder measure of restraint, other than detention, has not been established.

The lawyer of the accused objected to the application, citing the lack of substantial evidence of the risks under Art. 177 Code of Criminal Procedure of Ukraine. The defense stressed that the accused has extenuating circumstances such as strong social ties, namely the presence of three children, two of whom are minors, requested the court not to apply to the accused measure of restraint related to restriction of freedom. According to the lawyer, the prosecutor, when applying for an extension of the measure of restraint, refers only to one reason - the gravity of the charge.

This corresponds to paragraph 3 of Art. 5

of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention), according to which, after a certain period of time, it is just the existence of reasonable suspicion that does not justify deprivation of liberty and the courts should give other reasons for the extension of detention (decision in the cases of “Borisenko v. Ukraine”, “Yablonsky v. Poland”). Moreover, these grounds must be clearly indicated by the national courts (“Eloev v. Ukraine”, paragraph 60, “Kharchenko v. Ukraine”). However, the court granted the prosecutor’s request, extending the detention for 60 days with the possibility of making a bail, which was originally established.

Even though the ECtHR considers it unacceptable that the domestic courts consider it possible to authorize detention without giving any reason for such decisions, this was not taken into account. The Court also notes that, having examined the relevant specific facts and motivated certain decisions solely by the gravity of the charges, the domestic courts have repeatedly extended their detention on grounds that cannot be considered “sufficient”. Furthermore, in one of its decisions the city court did not invoke these or other specific circumstances in order to explain the impossibility of choosing alternative measures instead of detention, as required by Article 5 § 3 of the Convention. When extending the period of detention, the court should not rely solely on the gravity of the charge. It must also justify the impossibility of applying other measures (“Osipenko v. Ukraine”).

Monitoring the case of Kulish Natalya (session 03/06/2020)

On March 6, 2020, in the Zaliznychny District Court of the city of Lvov, a criminal case No. 12019140000000394 was examined on charges of Natalya Kulish in attempting to sell her minor daughter to the Czech Republic for sexual slavery (under part 3 of article 149 of the Criminal Code of Ukraine). Criminal proceedings on charges of Kulish N.I. considered collectively, composed of three judges: Kirilyuk A.I., Rumilova N.M., Liush A.I. The International

Society for Human Rights continues to monitor this case.

The hearing was scheduled for 11:00 am but started at 11:55. The day before the hearing, the prosecutor S. Krishtanovich filed a motion to postpone consideration of the case in connection with the passage of re-certification.

The presiding judge Kirilluk A. submitted the petition of the prosecutor for discussion, as well as to clarify the attitude of the participants in the case to this petition. The lawyer Sidoruk E.O., as well as the accused Kulish N.I. herself, did not object to the satisfaction of the prosecutor’s request.

The court decided to grant the motion and adjourned the hearing to 03/26/2020.

It should be noted that the accused Kulish N. has been in custody since 06/13/2019. And from her words, during a long stay in custody, her health condition deteriorated significantly.

As follows from the case law of the ECtHR, the conditions of detention can be recognized as degrading and violating Article 3 of the European Convention on Human Rights (hereinafter - the Convention), if the state of health of the accused has worsened significantly during his detention. In particular, the European Court notes such factors as overpopulation and unsanitary conditions in the cells and their negative impact on the health and well-being of persons detained for a long time (“Kalashnikov v. Russia”, “Florea v. Romania”). Kulish N.I. also complained about the presence of the above factors in the issue of deterioration of health.

In addition, the International Society for Human Rights considers it important to note that in the criminal proceedings against N. Kulish the court did not consider a measure of restraint other than an exceptional one - detention. This is also regarded by the ECtHR as a violation of Article 5 § 3 of the Convention in cases where it is a long term of detention, and the domestic courts justify the extension of the terms of detention on the same grounds throughout the entire period of detention, or do not substantiate at all (“Baryshevsky v. Ukraine”, para. 69, “Eloev v. Ukraine”, para. 60, “Kharchenko v. Ukraine”,

para. 80, “Gerashchenko v. Ukraine”), and also do not consider the issue of applying an alternative measure of restraint (“Baryshevsky v. Ukraine” p. 51; 64).

Monitoring the case of Kulish Natalya (session 03/26/2020)

On March 26, 2020, in the Zaliznychny District Court of the city of Lviv, the case was examined in criminal proceedings No. 1201914000000394 on charges of Natalya Kulish in an attempt to sell her minor daughter to the Czech Republic for sexual slavery (under part 3 of article 149 of the Criminal Code of Ukraine). Criminal proceedings on charges of Kulish N.I. considered collectively, composed of three judges: Kirilyuk A.I., Rumilova N.M., Liush A.I. The trial in this case was scheduled for 11:00 am, and began 50 minutes late. The International Society for Human Rights continues to monitor this case.

The course of the hearing. Lawyer Sidoruk E.O. filed a petition for the possibility of her client taking a seat on a bench near a lawyer due to the fact that the glass box in which the accused is located interferes with the implementation of appropriate defense. The accused N. Kulish supported the lawyer’s request, and stated that she was hard of hearing both the court and the participants in the trial.

One of the panel judges, Judge N. M. Rumilova, made a remark to the lawyer, asking why such a request was not submitted by the accused herself, since she is an adult capable person and is able to independently make such a request. In response, the lawyer emphasized that she is the defender of the accused Kulish N.I. and uses the rights provided for in Part 4 of Art. 46 Code of Criminal Procedure of Ukraine.

The prosecutor did not object to the satisfaction of the request made by the defense counsel. The court asked the head of the escort service whether it is possible to ensure that the accused is on a bench near a lawyer. The convoy, referring to the “Instructions on the organization of the escort and detention in the courts of the accused (defendants) convicted at the request of the courts”, stated that such an

action is not provided. As a result, the court refused to satisfy the lawyer’s request. The International Society for Human Rights has repeatedly pointed out that the placement of the defendant in a separate box may affect the quality of the defense provided (case of a Berkut, A. Melnik and others, etc.). In addition, in paragraph 149 of the case “Yaroslav Belousov v. Russia”, the ECtHR noted that restrictive measures in the courtroom could affect the fairness of the hearing guaranteed by Article 6 of the Convention.

Attorney Sidoruk E.O. filed a motion to change the measure of restraint to a milder one, in the form of round-the-clock house arrest. According to the lawyer, the risks referred to by the prosecution when choosing a measure of restraint were no longer relevant. She also emphasized that there are circumstances that, in her opinion, were not taken into account by the court, namely: the strength of the accused’s social ties, detention for 9 months, the presence of a young daughter and minor son. In addition, one of the risks identified in the petition of the prosecutor for the extension of the measure of restraint in the form of detention is the risk of absconding from the court, today is not relevant due to the introduction of an emergency in the country during which there is no interregional and international transport connection to in accordance with the Resolution of the Cabinet of Ministers of Ukraine “On the extension of quarantine” of March 25, 2020.

A similar situation was analyzed by the ECtHR in a complaint No. 38717/04 dated October 14, 2010 in the case of “Khairedinov v. Ukraine”. In paragraph 29 of the decision, the Court stated that the fact that “. . . at the time of the applicant’s detention he was about twenty years old, he had no criminal record and had a permanent place of residence, where, as confirmed by the local authorities, he had good established social ties” was not taken into account by the domestic courts when they decided to detain the applicant. Furthermore, in assessing the identity of the applicant, the domestic courts decided to refer exclusively to negative characteristics and did not take into

account the positive ones. In the present case, the Court found the applicant's complaint well-founded and decided in his favor.

In addition to the petition of the lawyer regarding the presence of his client nearby, the court examined the petitions of the parties regarding the measure of restraint. According to the lawyer, court hearings are appointed only with the aim of extending the measure of restraint in the form of detention, since the criminal case itself is essentially not considered.

Natalya Kulish's lawyer asked the court to change the measure of restraint to round-the-clock house arrest, appealing to the decisions of the European Court, which indicated that after some time the mere existence of a reasonable suspicion ceases to be the basis for detention (for example, the case of "Yablonsky v. Poland"). The accused herself supported the request of her lawyer. And she said that she needed to have a surgery on her leg, which is impossible to do in the detention center; they cannot provide appropriate medical assistance, they do not provide medicine. While in custody, the defendant's health condition, she said, had deteriorated significantly. In the medical unit of the pre-trial detention center, the diagnosis was established: chronic gastritis, theodral gastric reflex.

Judge Liush A.I. from the panel of judges asked the accused: is she pregnant? Kulish N.I. answered that she was pregnant at the time of the election of a measure of restraint. During her stay in the pre-trial detention center, she lost a child. In addition, the accused Kulish claims that there have been no complaints about her behavior during her stay in the remand prison.

The prosecutor objected to the request of the defense and requested the court to extend the detention for 60 days, referring to the risk provided for in paragraph 3 of part 1 of Art. 177 Code of Criminal Procedure of Ukraine: it is illegal to influence a victim, witness, other suspect, accused, expert, specialist in the same criminal proceedings. It should be noted that the victim in this case is the minor daughter of the accused, whose mother is accused of

trying to sell her into sexual slavery in another country. The prosecution also noted the increased public danger of the alleged crime, which is also confirmed by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the Council of Europe Convention on Action against Trafficking in Human Beings, ratified by Ukraine.

According to the prosecutor, at this stage of the criminal proceedings it is impossible to change the measure of restraint due to the fact that during the investigation of evidence the measure of restraint in the form of detention should be applied, which makes it impossible to influence witnesses.

Nevertheless, the International Society for Human Rights, realizing that in each case the issue of detention should be studied individually, recalls the importance of justifying the need to extend an exceptional measure of restraint.

The court, having conferred, decided to satisfy the prosecutor's application by extending the detention for 60 days with the possibility of making a bail which was originally established.

Monitoring the case of Kulish Natalya Igorevna (hearing on 05/21/2020)

On May 21, 2020, in the Zaliznychny District Court of the city of Lvov, the case was examined in criminal proceedings No. 12019140000000394 on charges of Natalya Kulish in an attempt to sell her minor daughter to the Czech Republic for sexual slavery (under part 3 of article 149 of the Criminal Code of Ukraine). Criminal proceedings on charges of Kulish N.I. was considered solely by Judge Rumilova N.M. The court hearing in this case was scheduled for 11:00 am and began 40 minutes late. The International Society for Human Rights continues to monitor this case.

The course of the hearing. As the accused's detention expire on 23 May 2020, the prosecutor Krishtanovich S. S. filed a motion to extend the measure of restraint in the form of detention for 60 days with the possibility of making a bail in the amount of UAH 192,000. He argued the application by the fact that the

risks under Art. 177 Code of Criminal Procedure of Ukraine, which were the basis at the time of applying the measure of restraint, did not decrease, but the grounds for application in relation to the accused Kulish N.I. a milder measure of restraint, other than detention, has not been established.

The accused's lawyer, Sidoruk E.O., objected to the application, noting that the prosecutor's application did not contain substantial evidence of the risks under Art. 177 Code of Criminal Procedure of Ukraine. The accused herself supported the request of her counsel. According to Sidoruk E.O., the prosecutor, stating a request for an extension of the measure of restraint, refers only to one reason - the gravity of the charge.

Analyzing the petition of the prosecution, ISHR focuses on paragraph 3 of Art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention), according to which, after a certain period of time, the mere existence of reasonable suspicion does not justify deprivation of liberty and the courts should give other reasons for the extension of detention (judgment in the case of "Borisenko v. Ukraine", "Yablonsky v. Poland"). Moreover, these grounds should be clearly indicated by the national courts ("Eloev v. Ukraine", "Kharchenko v. Ukraine"). And the fact that the court granted the prosecutor's request that does not meet the requirements of the Code of Criminal Procedure by extending detention for 60 days may indicate a problem of automatic extension of detention.

According to the defense, court hearings are appointed only with the aim of extending the measure of restraint in the form of detention, since the criminal case itself is not, in fact, considered. The court in its ruling did not state any arguments for extending the period of detention. In addition, after receiving the text of the decision, the lawyer noted that it did not correspond to the course of the trial. The International Society for Human Rights expresses its concern regarding the legality and fairness of such a court decision.

In its decisions, the European Court of Hu-

man Rights notes that although the national court has a certain margin of appreciation with regard to the choice of arguments in a particular case and the adoption of evidence in support of the parties' positions, the authority is obliged to justify its actions by providing reasons for its decisions ("Suominen v. Finland").

Monitoring of the case of Natalya Igorevna Kulish (hearing on July 16, 2020)

On July 16, 2020, the Zaliznychny District Court of the city of Lvov considered the case in criminal proceedings number 1201914000000394 on charges of Natalya Kulish in an attempt to sell her underage daughter to the Czech Republic into sexual slavery (under Part 3 of Article 149 of the Criminal Code of Ukraine). Criminal proceedings on charges of N.I. Kulish considered single-handedly by judge N.M. Rumilova. The International Society for Human Rights continues to monitor this case.

The course of the hearing. Prosecutor S.S. Krishtanovich filed a petition to extend the measure of restraint in the form of detention for a period of 60 days with the possibility of a bail in the amount of 192,000 UAH. He argued that the risks provided for by Article 177 of the Criminal Procedure Code of Ukraine, which were the basis during the application of the measure of restraint, did not diminish, but the grounds for the application of N.I. Kulish against the accused. no milder measure of restraint other than detention has been established. The prosecutor noted that according to the certificate provided by the head of the medical unit of the pre-trial detention center, the state of health of Kulish N.I. assessed as satisfactory.

The defendant's lawyer - Sidoruk E.O. objected to the stated petition, arguing that there was no substantial evidence of the existence of risks under Article 177 of the Criminal Procedure Code of Ukraine. The accused N. Kulish has been in custody for over a year, which, in his opinion, is contrary to Article 197 of the Criminal Procedure Code of Ukraine. Experts from the International Society for Human

Rights are concerned about this situation.

The defense referred to the case law of the ECtHR, according to which, after a certain period of time, the mere existence of reasonable suspicion does not justify the deprivation of liberty, and the courts must give other grounds for extending the detention (judgment in the case “Borisenko v. Ukraine”, “Yablonsky v. Poland”). Moreover, these grounds must be clearly indicated by the national courts (“Eloyev v. Ukraine”, “Kharchenko v. Ukraine”).

According to the lawyer, the state of health of the accused is constantly deteriorating, new diseases have begun to develop. The lawyer noted that N. Kulish needs surgery on her leg.

According to the defense lawyer, court sessions are scheduled only for the purpose of extending the measure of restraint in the form of detention, since the criminal case itself is essentially not considered. She also stressed that there are circumstances that, in her opinion, were not taken into account by the court, namely: the strength of the social connections of the accused - the presence of a minor daughter and a minor son.

Natalya Kulish’s lawyer asked the court to grant her petition to change the measure of restraint to round-the-clock house arrest. The accused herself supported the petition and stated that with regard to the risk of hiding from the preliminary investigation and / or the court, she has nowhere to run and she will not harm herself or her family. During her stay in custody, the state of health of the accused, according to her, has deteriorated significantly due to unsanitary conditions, since they are taken to the shower once every two or even three weeks.

As follows from the case law of the ECtHR, conditions of detention can be deemed to degrade human dignity and violate Article 3 of the European Convention on Human Rights, if during the time of detention, the state of health of the accused has significantly deteriorated. In particular, the Court notes factors such as overcrowding and unsanitary conditions in cells and their negative impact on the health and well-being of persons in detention for a long time (“Kalashnikov v. Russia”, “Flo-

rea v. Romania”). Kulish N.I. also complained about the presence of the above factors in the matter of deteriorating well-being.

The court, after consulting, decided to grant the lawyer’s petition, changing the measure of restraint from detention to round-the-clock house arrest for a period of 60 days.

3.28 The trial of Dmitry Kurylenko

Monitoring of the case of Dmitry Kurylenko (hearing 09.09.2020)

09/09/2020, the Collegium of Judges of the Criminal Chamber of the Lvov Court of Appeal considered the case in criminal proceedings number 12020140000000490 on charges of Dmitry Pavlovich Kurylenko in violation of road safety rules or the operation of transport by a person driving a vehicle, which resulted in the death of several persons, that is, in the commission a crime under Article 286 Part 3 of the Criminal Code of Ukraine.

Criminal proceedings on charges of D.P. Kurylenko was considered collegially in the composition of three judges: V.Y. Golovatiy, I.P. Gutsal, T.M. Urduk. The International Society for Human Rights is starting to monitor this case.

The course of the hearing. Defender of the accused D.P. Kurylenko - Ikavy M.R. filed an appeal against the decision of the investigating judge of the Galitsky District Court of the city of Lvov dated 08.20.2020 on the extension of the period of detention in criminal proceedings. By this decision, the investigating judge granted the petition of the investigator of the Main Directorate of the National Police in the Lvov region Stepanenko Y.M. and extended the term of the measure of restraint in the form of detention for 60 days to the suspect until 10.18.2020, with the determination of a bail in the amount of UAH 168, 160.

In the reasons for the decision, the investigating judge referred to the fact that D.P. Kurylenko is suspected of committing a serious crime, as a result of which three people died, and therefore the risks of non-fulfillment

by Dmitry Kurylenko of his procedural obligations under Art. 177 of the Criminal Procedure Code of Ukraine continue to exist. However, the court in its decision did not indicate the reasons for the impossibility of applying a milder measure of restraint not related to detention.

The ECtHR has often found a violation of paragraph 3 of Art. 5 of the Convention in cases where domestic courts continued detention, relying mainly on the gravity of the charges and using formulaic language, without even considering specific facts or the possibility of applying alternative measures (“Kharchenko v. Ukraine”, paras 80-81; “Tretyakov v. Ukraine” para. 59).

Defender Ikavyi M.R. in his appeal asked to change the decision of the investigating judge in terms of the size of the bail and determine it in the amount of UAH 42,040. The lawyer drew attention to the fact that the judge of the Galitsky District Court did not take into account that the suspect had not been previously prosecuted, had committed a crime through negligence, and was himself a disabled. He also has a dependent mother – also a disabled person and a grandmother; positively characterized, has a permanent place of residence. The lawyer also pointed out that the amount of the bail determined by the investigating judge was too high. The investigating judge, in his opinion, did not take into account the income statement of the suspect, according to which his income for six months is 9,828 UAH.

Prosecutor A. Voitsenko objected to the appeal and asked the court to leave the decision of the investigating judge of the Galitskiy District Court of the city of Lvov dated 08.20.2020 unchanged. Motivating by the fact that D.P. Kurylenko is reasonably suspected of having committed a crime, and the risk that the suspect may try to hide from the preliminary investigation and / or court continues to exist.

However, in the case “Panchenko v. Russia” paragraph 106, the ECtHR highlighted that the risk of escape should not be assessed solely on the basis of the severity of the punishment that may follow. It should be determined taking into account a number of other relevant

factors, which can either confirm that there is a danger of escape or show that it is too small and there is no need for preliminary detention. The prosecutor could not give such reasons.

In addition, for this criminal proceeding, it is still necessary to complete the transport-traceological and auto-technical examination, forensic medical examination, it may take a long time to get results of this examinations.

The court, after consulting, decided to refuse to satisfy the appeal of the defender M.R. Ikavyi, leaving the decision of the investigating judge of the Galitskiy District Court of Lvov dated 08.20.2020 unchanged.

3.29 The trial of Andrei Lesik

Monitoring the case on charges of Andrei Lesik (01/30/2020)

01/30/2020 in the Dzerzhinsky district court of the city of Kharkov, a hearing was held in the case of Andrei Lesik, who is accused of resisting a law enforcement officer in the performance of his official duties, as well as intentionally causing bodily harm to him in connection with the officer’s official duties (part 2 of article 342, Part 2 of Art. 345 of the CC of Ukraine).

The judge announced the next stage of the trial, the study of video materials from CD discs that were added to the case file.

A short audio recording of a telephone conversation of the accused when exiting the building of the Ukrainian Security Service (SBU) was studied. In this audio recording, you can hear the accused trying to leave the building to meet his lawyer, and the SBU officers somehow prevent this. On the record you can hear A. Lesik shouting more than once that he goes to the lawyer, asks that he be released and not touched. As the accused himself said, he arrived at the SBU on the recommendation of a lawyer to familiarize himself with the prosecution, after which the SBU officers “insistently” asked him to sign some documents and did not allow him to go to the lawyer, which contradicts Part 3 of Art. 6 of the Convention. After A. Lesik on the recommendation of a lawyer, refused to sign anything, a fight began and he

was taken by ambulance to the hospital.

The European Court of Human Rights notes the importance of the investigative stage in preparing for the trial of a criminal case, since the evidence obtained at this stage determines the framework within which the charge will be considered in a court case (“Kahn v. Austria”). At this stage of the proceedings, the accused is often in a particularly vulnerable position, the effect of which is enhanced by the fact that criminal law, especially the provisions governing the collection and use of evidence, is becoming more complicated. In most cases, such a special vulnerability can be properly compensated only by the help of a lawyer, whose task is, in particular, to ensure that the rights of the accused are respected. In fact, this right implies that the party to the criminal case, when trying to prove its version against the accused, cannot use the evidence obtained using methods of coercion or harassment contrary to the will of the accused (“Jaloh v. Germany”, “Kola v. Turkey”).

Ensuring speedy access to a lawyer is one of the procedural guarantees to which the Court pays particular attention when examining the issue of whether the very essence of the applicant’s right not to incriminate himself was undermined during the proceedings (“Jaloh v. Germany” (paragraph 101)).

The prosecutor stated that this record has no evidentiary properties, since it is impossible to establish on the record whether the voice on the audio belongs exactly to the accused. The prosecutor also indicated that the time when the record was made is unknown.

Then another video from the hospital itself was watched, namely at the entrance to the room of A. Lesik. This video recorded how SBU officers tried to get into the accused’s room, which Lesik’s acquaintances prevented. His wife and father were recorded on the video and the stampede is seen, screams are heard that the victim does not have a lawyer, requests for identification, etc. During the stampede, the situation escalates, SBU officers begin to raise their voices in response to some actions of the “defenders”, after which they break through a crowd of people into the room, where the

victim was provided with medical care. The prosecutor, commenting on this video file, said that there were no facts recorded on the video that would confirm or refute the actions allegedly incriminated to Lesik. The prosecution argues that the actions of law enforcement were absolutely legal, as the officers came to deliver the summons to Andrei Lesik and behaved correctly.

Further, the lawyer made an assumption that the SBU officers could have received damages that were established by the examination during the stampede itself and stated that such a possibility, in principle, was not checked by the investigation. In accordance with the case law of the European Court, if the violation of the right to life or physical integrity was not caused deliberately, the positive obligation to create an “effective judicial system” does not necessarily require criminal proceedings in each case and can be respected by civil, administrative or even disciplinary remedies.

However, the minimum requirement for such a system is that the persons responsible for the investigation should be independent of those involved in the events that are being investigated. This refers to hierarchical or institutional independence, as well as practical independence (“Sergey Shevchenko v. Ukraine”).

Accordingly, the system that is required by Art. 2 of the Convention should provide for an independent and impartial investigation that meets certain minimum standards of effectiveness. Thus, the competent authorities must act with due persistence and, on their own initiative, initiate proceedings that can, firstly, establish the circumstances in which the event occurred and the shortcomings of the system; secondly, to establish which of the representatives of state bodies were involved in the incident (“Sergey Shevchenko v. Ukraine”).

3.30 The trial of Igor Lozinsky and others

Monitoring of the case of Lozinsky Igor Nikolaevich, Koshevarov Evgeny Vasilievich, Piven Vadim Stepanovich, Zatzvorsky Roman Bogdanovich (session on 04.10.2020)

04/10/2020, in the Lychakivsky district court of the city of Lviv, the case was examined in criminal proceedings No. 1201814000000196 on charges: 1. Lozinsky Igor Nikolaevich in incitement to commit a crime under Part 5 of Art. 191 of the Criminal Code of Ukraine (the appropriation, embezzlement of property or the seizure of it by abuse of official position were committed in especially large amounts or by an organized group); as well as in official forgery (part 1 of article 366 of the Criminal Code) committed by a group of persons by prior conspiracy; 2. Koshevarov Evgeny Vasilievich and Piven Vadim Stepanovich in committing crimes under Part 5 of Art. 191 and part 1 of the article 366 of the Criminal Code of Ukraine; 3. Zatzvorsky Roman Bogdanovich committing a crime, under Part 1 Article 366 of the Criminal Code of Ukraine.

The criminal proceedings are examined collectively, composed of three judges: Nor N.V., Gritsko G.G., Strepko N.L. The International Society for Human Rights begins monitoring this case.

The course of the hearing. At the hearing on April 10 the prosecutor Krishtanovich S.S. filed a motion to extend to the accused Piven Vadim Stepanovich a measure of restraint in the form of a house arrest at night from 00:00 to 06:00 am, with the assignment of the duties stipulated by the Code of Criminal Procedure: to arrive at the court and to the prosecutor upon request, to deposit his passport (passports) for traveling abroad, other documents giving the right to leave Ukraine and enter Ukraine, not to leave the place of residence at a time determined by the court, to refrain from communicating with witnesses in criminal proceedings. The prosecutor arguing that the accused could try to hide from the court, illegally influence witnesses, commit another

criminal offense, or continue to engage in criminal activities, asked the court to grant his request.

According to the lawyer Ivanov O.A., by extending the measure of restraint to V. Piven, the court will violate Article 5 of the Convention on Human Rights and Fundamental Freedoms.

It should be noted that in the case of “Navalny v. Russia”, the applicant complained of house arrest, because this type of measure of restraint was unnecessary and masterful. The ECtHR emphasized that the national court did not show any signs that the accused intended to evade the investigation; on the contrary, he was present at all the necessary investigative actions.

It is important to note that the prosecutor’s petition did not indicate any new circumstances for extending the measure of restraint to the accused Piven V. S. The risks to which the prosecutor refers were based solely on his assumptions.

ISHR experts have repeatedly focused on the fact that the severity of the alleged crime and the severity of the possible punishment cannot justify the risk of escape or hiding from justice.

The prosecutor also filed a motion to extend the measure of restraint of Yevgeny Vasilyevich Koshevarov. Considering that E. Koshevarov is on bail, the prosecution requested an extension of the following duties: to arrive at the court and to the prosecutor upon request, to deposit his passport (s) with the relevant state authorities for travel abroad, other documents giving the right to leave Ukraine and enter Ukraine, not leave the city of Lviv without the permission of the prosecutor or the court, refrain from communicating with witnesses in criminal proceedings, other employees of the Sambir communal enterprise “United”, officials of the Sambir city council and the Department of Development and Operation of Housing and Public Utilities LOGA, motivating such request by the same risks as in the first application.

In respect of I. Lozinsky a similar request was made (in the form of a personal obliga-

tion).

It should be noted that in this criminal proceeding the prosecutor submits a request for an extension of the measure of restraint in respect of the three accused, citing the same risks. However, the prosecution asks the court to apply different measures of restraint to each accused. The danger that the accused will create obstacles to the proper conduct of the trial cannot be assessed abstractly, but must be supported by factual evidence (“Bekchiev v. Moldova”, para. 59).

The defense objected to satisfying the prosecutor’s motives, arguing that the prosecutor did not take sufficient risks to consider that the accused would hide from the court and put pressure on witnesses, and asked the court to choose milder measures of restraint for the accused in the form of a personal obligation based on case law of the ECtHR. The defendants Lozinsky I.N., Koshevarov E.V., Piven V.S. also supported the opinion of their defenders.

Despite the arguments of the lawyers, the prosecutor’s requests were granted.

Monitoring of the case of Lozinsky Igor Nikolaevich, Koshevarov Evgeny Vasilievich, Piven Vadim Stepanovich, Zatzvorskyy Roman Bogdanovich (hearing on 05/28/2020)

On May 28, 2020, in the Lychakovskyy district court of the city of Lvov, the case was examined in criminal proceedings No. 12018140000000196 on the charge of: 1. Lozinsky Igor Nikolaevich in incitement to commit a crime under Part 5 of Art. 191 of the Criminal Code of Ukraine (the appropriation, embezzlement of property or the seizure of it by abuse of official position were committed in especially large amounts or by an organized group); as well as in official forgery (part 1 of article 366 of the Criminal Code) committed by a group of persons by prior conspiracy; 2. Koshevarov Evgeny Vasilievich, Piven Vadim Stepanovich in committing crimes under Part 5 of Art. 191 and part 1 of the article 366 of the Criminal Code of Ukraine. 3. Zatzvorskyy Roman Bogdanovich in committing a crime

under Part 1 of Art. 366 of the Criminal Code of Ukraine. 4. Piven Vadim Stepanovich in committing crimes under Part 5 of Art. 191 and part 3 of article 28, part 1, article 366 of the Criminal Code of Ukraine.

The criminal proceedings are examined collectively by three judges: Nor N. V., Gritsko G. G., Strepko N. L. The International Society for Human Rights continues to monitor this case.

The course of the hearing. At the hearing the prosecutor Krishtanovich S.S. filed a motion to extend the accused Piven Vadim Stepanovich a measure of restraint in the form of house arrest at night from 00:00 to 06:00 am, with the assignment of duties stipulated by the norms of the criminal proceeding. On the grounds that the accused could try to escape from the court, illegally influence witnesses, commit another criminal offense, or continue to engage in criminal activity, he asked the court to grant his request.

It is important to note that the prosecutor’s request did not indicate any new circumstances for extending the measure of restraint to the accused Piven V. S. The risks to which the prosecutor referred were not justified, but were formulated only as assumptions. In the ECtHR judgment in the case of “Nikolova v. Bulgaria (No.2)”, the applicant complained that the preventive detention and her house arrest were unfounded and their duration was unreasonable. On this occasion, the ECtHR noted that “. . . the continued existence of a reasonable suspicion that the person arrested has committed an offense is a sine qua non condition for the lawfulness of prolonged detention, but over time it is no longer sufficient.” Moreover, in such cases, the ECtHR insists that the court must establish whether in the future such deprivation of liberty was justified by other grounds given by the judicial authorities. And whether such grounds were “appropriate” and “sufficient” (paras. 152, 153 of “Labitha v. Italy”).

The lawyer of the accused Piven V.S. - Mitsik A.V. objected to the petition of the prosecutor and verbally petitioned to change the measure of restraint from house arrest at night to

a personal obligation. According to the lawyer, imprisonment in the form of house arrest violates constitutional human rights. In addition, in his opinion, in the application of the prosecutor for the extension of the measure of restraint to V. Piven in the form of house arrest there were no justifications.

The prosecutor also filed a motion to extend the measure of restraint in the form of a pledge to Yevgeny Vasilievich Koshevarov, with the assignment of the duties stipulated by the criminal proceeding, motivating it with the same risks as in the first motion. The prosecutor's petition did not indicate any new circumstances for extending the measure of restraint to the accused E. Koshevarov, and it is also important to highlight the fact that the risks referred to by the prosecutor were not supported by evidence or otherwise justified. Thus, the International Society for Human Rights believes that in this case there may be a problem of shifting the burden of proof to lawyers. It is important to note that shifting the burden of proof from the prosecution to the defense is an absolute violation of the presumption of innocence ("Telfner v. Austria", para. 15).

In respect of I. Lozinsky a similar request was made (in the form of a personal obligation).

It should be noted that in this criminal proceeding the prosecutor submits a request to extend the measure of restraint in respect of the three accused, citing the same risks. However, the prosecution asks the court to apply different measures of restraint to each accused. Although the danger that the accused will interfere with the proper conduct of the trial cannot be assessed abstractly, but must be supported by factual evidence ("Bekchiev v. Moldova", para. 59), in the present case, the prosecutor did not substantiate any of the motions, thus it was abstractly, by internal conviction or for some other reason not obvious to the observer of the ISHR, that made the distinction between the accused.

The defense objected to the satisfaction of the prosecutor's requests and requested the court to mitigate the measures of restraint for the accused on a personal obligation, based on

the case law of the ECtHR. The defendants Lozinsky I.N., Koshevarov E.V., Piven V.S. also supported the opinion of their defenders.

The court rejected the request of the prosecutor to extend the measure of restraint in the form of house arrest to Piven V.S., having granted the request of the lawyer Mitsik A.V. and replaced the accused Piven V.S. measure of restraint from house arrest to a personal obligation. But, at the same time, court granted the prosecutor's motion to extend the previously selected measures of restraint against other defendants - Lozinsky I.N. and Koshevarov E.V.

3.31 The trial of Bogdan Mastruk

Monitoring of the criminal case of Bogdan Mastruk (session 01.24.2020)

On January 24, 2020, at 10:00 a.m., a hearing was held in the Sykhovsky District Court of the city of Lvov on suspicion of Mastruk Bogdan, born on August 5, 1997, in committing a criminal offense under Part 2 of Art. 15 h.2st.289 of the Criminal Code of Ukraine. Judge Borochock M.V., prosecutor Krasnitsky I.Ya., accused Maystruk B.A., defense counsel Burdin S.M., victim Galkin A.A. were present. Two witnesses were questioned: Dmitry N.I., Gentosh A.V.

Maystruk Bogdan is suspected of committing a crime under Part 2 of Article 289 of the Criminal Code of Ukraine - unlawful seizure of a vehicle, committed repeatedly or by prior conspiracy by a group of persons, or with violence not dangerous to the life or health of the victim, or with the threat of such violence or committed with penetration into a residence or other storage, or if it caused significant material damage.

On July 2, 2019 at about 11pm Maystruk Bogdan, being on the 150 Zelenaya street, with the use of violence that is not dangerous to the life or health of the victim, illegally took possession of a Honda scooter, but was detained, and for reasons beyond his control did not bring its criminal intent to the end.

During the interrogation in court, witness Dmitry Nazar, born on 02.07.1998, who is a friend of the victim Alexander Galkin, testified that the accused Maystruk B.A., together with two unknown persons, approached him and demanded that he give him a scooter which belongs to the victim, and upon hearing the refusal inflicted light bodily harm on the witness and took possession of the scooter.

Witness Gentosh Anna, born on 12.06.2000, who is the cousin of the victim A.Galkin, noted that she saw three unknown persons driving the victim's scooter along Zelenaya Street, and after that she called Galkin Alexander and reported what she saw.

During the court session, the prosecutor of the Sikhovsky department of the Lvov local prosecutor's office No. 1, Ivan Krasnitsky, filed a motion to bring witness Voyovich V.M.

When considering criminal proceedings No. 12019140070001693 of July 2, 2019, on suspicion of Mastruk Bogdan in committing a criminal offense under Part 2 of Art. 15 h.2st.289 of the Criminal Code of Ukraine, in our opinion, and in the opinion of the lawyer Burdin Sergey no violations (including human rights violations) were found.

3.32 The trial of Vladislav Manger and others

Monitoring of the case of V.N. Manger, A.A. Levin (hearing 08.28.2020)

On 08.28.2020, in the Dniprovsky district court of the city of Kiev, a case was considered in criminal proceedings number 1-kp / 755/1325/20 on charges of the chairman of the Kherson regional council Vladislav Nikolaevich Manger and ex-assistant to the deputy of the Kherson regional council Levin Alexey Alekseevich, in the commission of crimes provided for by part 3 of article 27, part 2 of article 28, part 2 of article 121 of the Criminal Code of Ukraine, namely, in organizing the commission of intentional grievous bodily harm by a group of persons by prior conspiracy in a manner that has the character of special torment, which entailed the death of the victim, civil

society activist Ekaterina Gandzyuk.

It should be noted that since 2018, five criminal proceedings have been opened in this case concerning the murder of the activist. In particular, on October 30, 2019, the General Prosecutor's Office transferred to the Ukrainian Secret Service (SBU) the criminal proceedings on the negligence of the police officers who initially investigated this case.

The course of the court session: The representative of the victims - lawyer Zakrevskaya, as well as the victims themselves did not appear in the courtroom, but submitted an application to hold the court session without their participation and asked to take into account the support of the claim, and in their further absence, continue the consideration of the case without their participation in compliance reasonable time frame. Defenders Strigin M.A. and Kozakevich S.V. also did not appear at the hearing having previously submitted a petition, and instead of the lawyer Dunaev, the lawyer Murashkina was involved.

Despite the fact that earlier (on August 20, 2020) the court ruled to detain both of the accused, at the request of their lawyers, at the time of the trial they were next to their defenders, and not in a glass box.

The course of the court session: the defenders, referring to exceptional circumstances, made a motion to transfer the case to another court due to the fact that most of the witnesses in the case are in another city. To which the court determined that the decision on determining the jurisdiction in this case had already been made by the decision of the Supreme Court dated 08/04/2020, drawing attention also to the fact that the witnesses are participants in criminal proceedings (and not judicial ones, as the lawyers referred to). This decision of the court is motivated by the fact that the place of committing the crime incriminated to the organizers in this criminal proceeding is an unidentified place where the accused committed actions containing signs of corpus delicti under Part 3 of Article 27 and the corresponding part of Article 121 of the Criminal Code of Ukraine. In addition, from the contents of the indictment, it was established that the pre-

trial investigation of this crime was carried out by the investigation department of the Main Directorate of the SBU in Kiev and the Kiev region, the location of which is an administrative building at 3A Askoldov street, Kiev (Pechersky district). Taking into account the provisions of Part 1 of Article 32 of the Criminal Procedure Code of Ukraine, the grounds provided for in paragraph 1 of Part 1 of Article 34 of the Code of Criminal Procedure of Ukraine for transferring criminal proceedings from one court to another within the jurisdiction of various courts of appeal have not been established.

Thus, the court put up for discussion the request of the defense to decide the issue of summoning witnesses before the announcement of the indictment.

The prosecutor opposed the granting of this petition, saying that the law does not oblige to determine a specific list of witnesses in the preliminary trial and added that the interrogation of witnesses should take place at the stage of examining the evidence.

The court refused to satisfy the request, considering it unfounded.

The defense also asked to summon about a hundred witnesses to the court for interrogation in this case, to which the prosecutor objected, arguing that some of them were not directly related to the circumstances of the case, and this, in his opinion, testifies to the deliberate delay in the trial by the defenders.

Note that Article 6 § 3 of the Convention on Human Rights protects the accused from a hasty trial (“Crocher and Moller v. Switzerland”). While it is important to conduct legal proceedings within a reasonable time frame, this should not be done at the expense of the procedural rights of one of the parties (“OAO Oil Company Yukos v. Russia”).

The lawyers have repeatedly drawn attention to the fact that in this court session it is the defense side who must prove the innocence of their clients, which, in principle, is not their procedural duties, and the prosecution has no direct evidence against the accused.

The jurisprudence of the European Court of Human Rights suggests that the principle of

the presumption of innocence requires, *inter alia*, that, in the performance of their duties, judges do not prejudice that the accused has committed a relevant offense; the burden of proof lies with the prosecution and any doubt is interpreted in favor of the accused. In order for the accused to properly prepare and present his defense, the prosecution must inform him of the initiation of legal proceedings against him, as well as provide evidence sufficient to convict him (“Barbera, Messegi and Jabardo v. Spain”; “Janosevich v. Sweden”). The presumption of innocence is violated when the burden of proof is shifted from the prosecution to the defense (“Telfner v. Austria”).

After reading the indictment, the accused themselves did not fully understand the essence of the accusation, in particular, the nature, motives and reasons for the accusation brought against them, therefore, the lawyer of the accused Munger V.N., Shadrin A.S., filed a request for a written clarification of the essence of the charge, in particular the way and method the accused Munger contacted the accused Levin (since in the indictment, according to the defenders, this was not stated).

The court, referring to Article 291 of the Code of Criminal Procedure and the fact that at this stage the court is obliged to clarify the charge only in the form in which it is presented in the indictment, did not consider this petition, but several times orally explained to each accused the indictment.

During the court hearing, the petition to change the measure of restraint against the accused V.N. Manger was also considered (bail instead of detention) in connection with the emergence of new circumstances of the case, namely, the beginning of the electoral process and the desire of the accused to participate in local elections.

The prosecutor opposed the granting of the petition, saying that the beginning of the electoral process did not fall under the category of new circumstances of the case, because the accused had known this information earlier.

Having listened to the opinion of the participants in the proceedings, the court decided to leave this petition without consideration.

The European Court of Human Rights reiterates that the question of whether a person's detention was justified or not cannot be assessed abstractly. The question of whether the accused should be kept in custody must be assessed on the basis of the facts of each particular case and in accordance with its specific characteristics ("Idalov v. Russia").

Also, in this court session, a civil claim was filed by one of the representatives of the victims, for the recovery of 23 million hryvnia in favor of the victims and a repeated petition for the seizure of the property, since the petition filed earlier was partially fulfilled. Consideration of these applications will take place at the next court session.

Monitoring of criminal proceedings V.N. Manger, A.A. Levin (hearing 10/15/2020)

10/15/2020, in the Dniprovsky District Court of the city of Kiev, a hearing of case No. 757/31502/20 was held on charges of the chairman of the Kherson Regional Council Vladislav Nikolaevich Manger and the ex-assistant of the deputy of the Kherson Regional Council Alexei Alekseevich Levin in committing crimes under Part 3 of Article 27, Part 2 of article 28, Part 2 of article 121 of the Criminal Code of Ukraine, namely, in organizing and committing, by prior conspiracy, by a group of persons intentionally grievous bodily harm in a manner that has the nature of special torment, which entailed the death of the victim - Kherson activist Ekaterina Gandzyuk.

It should be noted that, since 2018, five criminal proceedings have been opened regarding the murder of an activist. In particular, on October 30, 2019, the General Prosecutor's Office transferred to the Ukrainian Security Service (SBU) the criminal proceedings on the negligence of the police officers, who initially investigated this case.

As a reminder, the observer of the International Society for Human Rights has already monitored this case on 08.28.2020.

The course of the court session: the representative of the victim, lawyer E.A. Zakrevskaya and the victims themselves did not appear at the court session (as well as at the hearing on

08/28/2020), having previously submitted a petition to consider the case without their participation; in addition, the lawyers S.V. Kozakevich and I.S. Mokin also did not appear. The participants in the court proceedings did not object to the consideration of the case without victims, lawyers and one prosecutor. Thus, the court decided to continue the consideration of the case.

The hearing began with the submission by the defense of a petition to attach to the case file two sheets of paper with correspondence between the accused A.A. Levin and witness Igor Pavlovsky, which, according to the lawyers, is important for this court proceeding.

The prosecutor asked to refuse to grant the request, noting that it is not known when and under what circumstances this correspondence was carried out. Moreover, at the previous court session (September 18, 2020), where the witness was questioned, the defense had the opportunity to ask the necessary questions to the witness to substantiate their position in court. The prosecutor also noted that personal correspondence is confidential information and the witness during interrogation did not give his permission to disclose it in court.

The representative of the victim supported the position of the prosecutor. The court, referring to Art. 162 of the Criminal Procedure Code of Ukraine, refused to satisfy the request.

In addition, the lawyer A.S. Shadrin filed two applications to clarify the court decisions of September 18, 2020 and September 25, 2020, namely, whether these decisions are subject to appeal. The prosecutor objected, saying that there were no well-reasoned grounds for considering this petition as such. The court rejected these requests.

Also, the defender D.O. Ilchenko filed two petitions to provide lawyers with temporary access to documents, namely, to the medical history and medical card of K.V. Gandzyuk (asked to carry out the seizure provided for in Article 165 of the Criminal Procedure Code of Ukraine). The court granted the request.

The prosecutor also petitioned for an extension of the term of detention of the accused. The lawyers of the accused V.N. Manger filed

a motion to change the measure of restraint, and lawyer A.S. Shadrin asked the court to change the measure of restraint in the form of detention into house arrest, and lawyer D.O. Ilchenko asked to apply a bail in the amount of UAH 1152600. No such request was filed by attorney A.A. Levin.

The prosecutor substantiated the necessity of using detention on the following circumstances: • ensuring that the suspect performs the procedural duties assigned to him; • prevention of illegal influence on witnesses and the second suspect in the same criminal case; • preventing attempts to hide from the bodies of the preliminary investigation and the court.

In particular, according to the prosecutor, the defense, as well as the accused V.N. Munger tried to put pressure on the witness Igor Pavlovsky in the matter of granting his consent to disclose information about personal correspondence, information about which the lawyers sought to attach to the case file at this hearing. The prosecution also stressed that the accused, while under investigation, had repeatedly left the country. This, according to the prosecutor, confirms the real existence of these risks. Therefore, the prosecutor asked the court to extend the accused's detention period by 60 days without determining the amount of bail.

The defendant's lawyer, denying the words of the prosecutor, pointed out that all the risks named by the prosecution are not relevant. To the prosecutor's remark about the defendant's departure abroad, the lawyer replied, quoting: "he always returned." Also, according to the lawyer, the accused V.N. Manger conscientiously observed the measure of restraint in the form of detention, he did not exert pressure on any witnesses. In addition, the witnesses were questioned at the last court hearing.

The European Court of Human Rights points out that at the initial stages of the investigation, the possibility of obstruction of justice by the accused justifies the detention of such an accused. However, once evidence is collected, this rationale becomes less convincing. In particular, as regards the possibility of putting pressure on witnesses, the Court reiter-

ates that the domestic courts must show that during the relevant period of the applicant's detention there was and continued to be a substantial risk of intimidation of witnesses; it is not enough to rely only on some abstract possibility, not supported by any evidence. The court must also analyze pertinent factors, such as progress in the investigation or proceedings, the applicant's personality, his behavior before and after arrest, and any other specific factors to justify the risks that he might abuse the returned freedom by acting in for the purpose of falsifying or destroying evidence, or putting pressure on victims (§88 "Sokurenko v. Russian Federation").

The Court recognizes that, in cases involving multiple accused, the risk that a prisoner, if released, may put pressure on witnesses or otherwise obstruct the proceedings is often quite high. All of these factors may justify a relatively long period of detention. However, they do not give the authorities unlimited powers to extend this measure of restraint. The fact that a person is accused of a criminal conspiracy is not in itself sufficient to justify long periods of detention, his personal circumstances and behavior must always be taken into account (§ 53 "Sizov v. Russia").

Moreover, the lawyer drew attention to the fact that in the previous decision on the selection of a measure of restraint two months ago, the court did not analyze other circumstances that need to be investigated when choosing such a measure of restraint and which are indicated in Art. 178 of the Criminal Procedure Code of Ukraine. As the lawyer indicated, when on February 11, 2019, the accused V.N. Munger was charged with Part 2 of Article 115 of the Criminal Code of Ukraine and the court was considering a bail. But despite this, in the current situation, when the accused is charged with Part 3 of Article 27, Part 2 of Article 28, Part 2 of Article 121 of the Criminal Code, the court determined a measure of restraint in the form of detention.

The ECtHR has repeatedly pointed out that, although the severity of a possible sentence is an important component in assessing the risk of escape or committing new offenses on the

part of the accused, the need to extend the period of application of a measure of restraint in the form of detention cannot be assessed only from an abstract point of view, taking into account only the severity of the charges (§ 51 “Kolunov v. the Russian Federation”).

It should also be noted that the defense side, as at the last court session on 08.28.2020, drew the court’s attention to the fact that the accused V.N. Manger wants to participate in local elections, and his detention may deprive him of this right.

The court, after consulting, made a decision to reject two petitions of the defense to change the measure of restraint in respect of the accused V.N. Manger and grant the prosecutor’s request for an extension of the detention of both accused.

Monitoring of criminal proceedings of Manger Vladislav Nikolaevich and Levin Alexey Alekseevich (hearing 11.03.2020)

On 11.03.2020, in the Dniprovsk district court of the city of Kiev, a hearing of case No. 757/31502/20 was held on charges of the chairman of the Kherson regional council Manger V.N. and the ex-assistant of the member of the Kherson regional council Levin A.A. in committing crimes under Part 3 of Article 27; Part 2 of Article 28; Part 2 of Article 121 of the Criminal Code of Ukraine, namely, in organizing the commission of intentional grievous bodily harm by a group of persons by prior conspiracy in a manner that has the character of special torment, which entailed the death of the victim, a Kherson activist Gandzyuk E.

It should be noted that, starting in 2018, five criminal proceedings were opened in this case concerning the murder of the activist. In particular, on October 30, 2019, the Prosecutor General’s Office transferred to the Security Service of Ukraine (SBU) the criminal proceedings on the negligence of the police officers, who initially investigated this case.

Recall that the observer of the International Society for Human Rights has already monitored this case - on 08.28.2020 and 10.15.2020.

The course of the court session: the court continued to examine the materials of the pro-

ceedings. In particular, at the last court session on October 15, 2020, the court granted the motion of the lawyer Ilchenko D. for access to documents, namely, to the medical history and medical card of Gandzyuk E. But, as it turned out, the medical history of Gandzyuk E. was never returned to the hospital after a forensic medical examination, a letter was sent by the hospital administration regarding this situation. In the opinion of the defense, the prosecution must find these documents, since it was the prosecution that did not return the documents to the hospital, thereby failing to comply with the court’s decision.

It should also be noted that during the trial, the defendants were sited next to their defenders, and not in the glass box.

The European Court of Human Rights has found that, while the placement of defendants behind glass partitions or in glass booths does not in itself imply an element of humiliation sufficient to achieve a minimum level of severity, this level can be achieved if the circumstances of detention (in a “cage”), taken as a whole, will cause suffering or hardship that exceeds the inevitable level of suffering inherent in detention (“Yaroslav Belousov v. Russia”, para. 125).

It is worth paying attention to the positive trend of finding the accused during court hearings next to a lawyer, and not in a glass box. This is also confirmed by the report of the ISHR in the case of Tuman I. dated July 23, 2020.

Thus, in our opinion, the judges successfully implement the above aspect of the application of Art. 3 of the European Convention and recognize that the presence of an accused in a glass box in some cases may have signs of a violation of the right to defense and degrading treatment.

Examining the decision of the First Deputy Prosecutor General Storozhuk D. dated 11.02.2018 on the transfer of this case to the SBU, the defense side objected to the relevance and reasoning of the decision, emphasizing that the only reason for transferring the case from one pre-trial investigation authority to another is the ineffectiveness of such authority.

The prosecutor indicated completely different grounds for the transfer of the case, therefore, according to the defense, from the moment the case was transferred to the SBU authorities, it can be considered that the investigation is being carried out by an inappropriate pre-trial investigation authority. It also follows that all the evidence collected in this case after November 2, 2018 is inadmissible.

With regard to the inadmissibility of evidence, the ECtHR has indicated that it is not the Court's task to determine, in principle, whether certain types of evidence, for example, evidence obtained illegally from the point of view of national law, can be admissible or, indeed, whether the applicant was guilty or not. The question to be answered is whether the proceedings were generally fair, including how the evidence was obtained. This implies a determination of the "illegality" in question and, if it is a violation of another Convention right, the nature of the violation found ("PG and JH v. The United Kingdom", para. 76; "Heglas v. Czech Republic", paras. 89-92).

In addition, the defense referred to clause 6 of Section II of the Order of the General Prosecutor's Office of Ukraine dated March 28, 2019 No. 51 "On Approval of the Procedure for Organizing the Activities of Prosecutors and Investigators of the Prosecutor's Office in Criminal Proceedings", which specifies the criteria for ordering the pre-trial investigation to another body of pre-trial investigation, in particular, the removal of the investigator from the pre-trial investigation and the appointment of another investigator (Article 39 of the Criminal Procedure Code of Ukraine). In the event of an ineffective pre-trial investigation (Article 36 of the Criminal Procedure Code of Ukraine), the assignment of a pre-trial investigation to another pre-trial investigation body is carried out in accordance with the requirements of the law, taking into account the following criteria: - the fulfillment of the tasks of criminal proceedings has not been ensured; - the general principles of criminal proceedings have been violated, which has negatively affected or may affect the validity, comprehensiveness and completeness in criminal proceedings; -

the low quality of the procedural activities of the investigator (investigation team), as a result of which the obtained results of such activities do not correspond to reasonably permissible results that should have been and objectively could have been achieved during this time, given the complexity and specifics of the criminal investigation.

The representatives of the victims objected to the statement by the defense. They indicated that the court had case materials confirming the ineffectiveness of the police work at that time in this case.

In addition, other documents were examined: regarding the separation into a new criminal proceeding, the implementation of the investigation in this proceeding as a whole, as well as the reality / unreality of threats coming to witnesses and victims from the accused, according to their own statements.

Monitoring of criminal proceedings of V.N. Manger, A.A. Levin (hearing 12.04.2020)

12/04/2020, in the Dniprovsky District Court of the city of Kiev, a hearing of case No. 757/31502/20 was held on charges of the chairman of the Kherson Regional Council Vladislav Nikolaevich Manger and the ex-assistant of the deputy of the Kherson Regional Council Aleksey Alekseevich Levin, of committing crimes under Part 3 of Article 27; Part 2 of Article 28; Part 2 of Article 121 of the Criminal Code of Ukraine, namely, in organizing the infliction of intentional grievous bodily harm by a group of persons by prior conspiracy in a manner that has the character of special torment, which entailed the death of the victim - Kherson activist Ekaterina Gandzyuk.

It should be noted that since 2018, five criminal proceedings have been opened in this case concerning the murder of the activist. In particular, on October 30, 2019, the Prosecutor General's Office transferred to the Security Service of Ukraine (SBU) the criminal proceedings on the negligence of the police officers, who initially investigated this case.

Recall that the observer of the International Society for Human Rights has already monitored this case on 08/28/2020, 10/15/2020

and 11/03/2020.

The court session began with consideration of the motions of the prosecution and the defense.

The prosecutor filed a motion to extend the detention of both accused. Regarding the existence of risks of non-fulfillment by the accused of their procedural duties, the prosecutor noted that there was a risk on the part of V.N. Manger to hide from law enforcement agencies, since the accused, while still under investigation, repeatedly left the country. In turn, the accused A.A. Levin was previously convicted of an intentional violent crime, in addition, according to the prosecutor, he maintains contact with a group of persons who were also involved in similar crimes. These circumstances, according to the prosecution, may indicate the possibility of a second crime.

The prosecution also stated that there is a threat of influencing the witnesses by the accused in this criminal proceeding. Information about the existence of such a threat and, in particular, the fact that witness Igor Pavlovsky has repeatedly changed his testimony in court, according to the prosecution, is the result of pressure on the witness. The prosecutor has already expressed this position in his petition of 10/15/2020.

Moreover, according to the prosecutor, at the last court session on 12.03.2020, it was established that the accused V.N. Manger paid money in the amount of 4 thousand dollars to the currently convicted S. Torbin for causing bodily harm to Ekaterina Gandzyuk. The defense side noted that the prosecutor has a tendency to independently establish certain facts in the case, which is a direct violation of the current Criminal Procedure Code of Ukraine, which says that the facts in criminal proceedings are established by a court verdict, and before the verdict is pronounced, all information given by the prosecution is considered circumstances, which must be proven and verified by the court.

The European Court of Human Rights in such cases states that the risk of putting pressure on witnesses can be taken into account at the initial stages of the proceedings (“Yarzinski

v. Poland”, para. 43). However, over time, the interests of the investigation become insufficient to keep the suspect in custody: in the normal course of events, the perceived risks diminish as the investigation, evidence is taken and checks are carried out (“Cluth v. Belgium”, para. 44).

The prosecutor also referred to the decisions made by the appellate court in favor of the prosecution on the measure of restraint, and the fact that the accused had repeatedly failed to appear at the hearing, although notifications were sent to them in advance and in accordance with the law.

Given the existence of these risks, as well as the severity of the crime in which V.N. Manger and A.A. Levin are accused, the prosecutor asked the court to extend the terms of detention for both accused. Representatives of the victims E.A. Zakrevskaya and A.S. Veretilnik supported the prosecutor’s motion and asked to satisfy it.

On this point, it should be noted that every time it found a violation of Paragraph 3 of Article 5 of the Convention, the ECtHR noted the weakness of the arguments of the courts that authorized the applicant’s detention. From case to case, the Court has pointed out the following main deficiencies in the courts’ reasoning: reliance on the gravity of the charges brought as the primary source in order to justify the risk of the applicant absconding from justice; reference to the applicant’s foreign passport, financial resources and the fact that his alleged accomplices are on the run, as grounds for assuming that the applicant will follow suit; the suspicion, in the absence of an evidentiary basis, that the applicant will try to influence witnesses or use his obstacles in the authorities to administer justice, as well as refusal to scrutinize the possibility of applying another, less strict, measure of restraint, such as bail (“Dirdizov v. Russia”, para. 108).

In turn, the lawyers of the accused A.A. Levin asked the court to refuse the prosecutor’s petition and change the measure of restraint from detention to a milder one, the lawyers of the accused V.N. Manger – to change the measure to bail. At the same time, the defenders

drew the court's attention to the principle of a reasonable time frame for the consideration of the case and asked for the petitions for each accused to be considered separately.

In the opinion of the defense, all the theses about the existence of risks cited by the prosecutor are distorted in their wording and completely unfounded by proper evidence, and are based only on assumptions and the subjective opinion of the prosecutor. As for traveling abroad, lawyers do not cease to insist that their clients, absolutely legally, temporarily left the territory of Ukraine, without having any criminal intentions.

In addition, the defense parties stated that they had doubts about the objectivity of the testimonies provided by the witnesses, which at one time speak of pressure being exerted on them, and at the same time are at large without taking any measures to ensure their safety. This, in turn, in the opinion of the defenders, raises the question of the real existence for such witnesses of any threat from the accused. Therefore, the defense asked to re-interrogate these witnesses in order to clarify their testimony again.

The court, having consulted on the spot, decided to refuse to satisfy the petition of the lawyer A.S. Shadrin on the re-interrogation of a number of witnesses due to the fact that the grounds named by the lawyer ("wants to hear their testimony without representatives of the SBU") for the implementation of this procedural action do not comply with Article 352 of the Criminal Procedure Code of Ukraine.

The defense also substantiated its petition to change the measure of restraint by positive characteristics and behavior of the accused during criminal proceedings, their compliance with the proceeding, respect for the court and other factors. The lawyers of the accused A.A. Levin also asked the court to take into account his state of health (heart disease), the need for observation by a doctor, and the impossibility of the pre-trial detention center to ensure the frequency of such observations due to the closed nature of such an institution. The defense also drew attention to the fact that the defendant was not given the opportunity to

test for Covid-19, while he and his defenders suspected he had such a disease. Thus, according to the lawyer, the employees of the pre-trial detention center endangered not only A.A. Levin, but also other accused who are in the same cell with him.

Thus, there is a negative trend in the issue of providing timely and adequate medical assistance to the accused in custody, for example, in the case of Andrey Tatarintsev, who has not been provided with medical assistance for years, despite diabetes mellitus, or in the case of A. Melnik and others, where the accused also need regular inpatient and outpatient treatment (monitoring of these cases has been carried out for a long time by the observers of the International Society for Human Rights).

According to Article 199 of the Criminal Procedure Code of Ukraine, a petition for an extension of the period of detention, in addition to the information specified in Article 184 of this Code, must contain: a statement of the circumstances indicating that the reported risk has not diminished or that new risks have emerged that justify the detention of the person.

According to the observer of the ISHR, at this hearing, both the defense and the prosecution expressed almost identical arguments about changing the measure of restraint of the accused by what they voiced on 10.15.2020. The only, but no less important circumstance was named the state of health of the accused A.A. Levin. However, it should be noted that the defense did not ask for a medical examination for the accused to confirm the seriousness of the disease.

The European Court of Human Rights has frequently found a violation of paragraph 3 of Article 5 of the Convention in cases against Ukraine on the ground that, even with respect to long periods of detention, the domestic courts relied on the same set of grounds (if any) in all cases of relevant detention guarded. A similar violation can be observed in the case of A. Melnik and others.

The court decided to refuse to satisfy the defense's petition to change the measure of

restraint and satisfy the prosecutor's request to extend the detention for both accused to additional 60 days.

Also, the defense side filed two petitions for attaching the ruling of the Kiev Court of Appeal of 10.15.2020 and the decisions of the ECtHR to the case file, both of which were satisfied.

3.33 The trial of Aleksander Melnik and others

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (session 01/21/20)

On January 21, a regular court session was held in the Gadyatsky District Court of the Poltava Region in the case of the head of the "Visit" television company Alexander Melnik, who is one of the three accused (together with A. Kryzhanovsky, I. Kunik) in the murder of the mayor of Kremenchug A. Babayev and Judge of the Kremenchug court A. Lobodenko.

At this hearing, the evidence of the prosecution was investigated, namely the video of the investigative experiment with the participation of the former accused I. Pasichny, who had previously made a deal with the prosecutor and plead guilty.

Earlier on June 12, 2019, the Gadyatskiy District Court of the Poltava region approved a visit of the prosecutor with the accused I. Pasichny in the Poltava Penitentiary Institution. This petition was not submitted for discussion by the participants in the trial, despite the fact that on the same day the proceedings were held.

On the basis of the sanction authorized by the court, the prosecutor visited the accused I. Pasichny in the pre-trial detention center without the participation of a defense counsel, despite the requirement of the Criminal Code on the mandatory participation of a defense counsel in proceedings for particularly complex crimes (Articles 52, 53 of the Criminal Code). The accused himself also confirmed that the meeting took place without the participation of a lawyer. In addition, the meeting, which is a procedural action, was not recorded.

07/13/2019, the court allowed the prosecution to conduct additional investigative actions with the participation of I. Pasichny, who, in his sixth year in custody, declared his desire to conclude a guilty plea agreement. Due to the lack of documentary recording of the meeting and the absence of a lawyer, the other three defendants and their lawyers think that the prosecutor could put pressure on I. Pasichny.

At this session, the defense also stated that the prosecutor Savchuk visited another accused, A. Kryzhanovsky in the Poltava pre-trial detention center. And again, the communication took place without a lawyer and without procedural fixation. On this fact, the defense side challenged the prosecutor Savchuk. The court postponed consideration of the application for challenge because of the failure to appear at the hearing of the prosecutor Savchuk.

According to Part 1 of Art. 52 of the Code of Criminal Procedure of Ukraine, the participation of a defender is mandatory in criminal proceedings regarding particularly serious crimes.

Earlier in the court hearings, the accused already complained to the court that during the technical breaks on the days of the sessions, the prosecutor Savchuk tried to communicate informally with the accused, waiting for one of them near the toilet. The International Society for Human Rights is concerned about this way of obtaining evidence and agreements from the prosecution. We hope that the court will pay attention to this feature of the procedural actions in terms of its admissibility and legality.

During the trial, the petitions of the parties were not announced.

The defense repeatedly, before this court session, drew the court's attention to the lack of medical treatment for the accused. It should be noted that all defendants have been in custody since September 2014. Over more than five years of detention, the health of the accused has deteriorated significantly.

Lawyers expressed concern about the position of the court regarding the petitions of the accused to provide inpatient treatment. De-

spite the fact that the court had previously received the conclusions of the forensic medical examination indicating the need for in-patient treatment for A. Melnik and out-patient treatment for A. Kryzhanovsky, the court just redirects these requests to the Poltava pre-trial detention center.

The defense has repeatedly insisted on the necessary inpatient treatment of the accused who is in custody for more than 5 years. The need for inpatient treatment is also indicated by the conclusions of the forensic medical examination.

The European Court of Human Rights in its decision “Khamatov v. Azerbaijan” stated that the mere fact that the applicant was examined by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate. The authorities had to ensure that the applicant not only visited the doctor and that his complaints were heard, but also that the necessary conditions were created for the actual implementation of the prescribed treatment.

Thus, the experts of the ISHR see insufficient court attention on solving the health problems of the accused.

In addition to the indicated problems, A. Melnik’s lawyer drew the attention of the ISHR observer to the problem of retiring a pension for his client. A. Melnik, as previously indicated in the ISHR reports, is a participant in the liquidation of the Chernobyl accident of category 1, as a result of which he received disability of group 2. Half a year ago, he received a letter from the pension fund (PF) at his home address about the possibility of transition to the Chernobyl disability pension. Given the fact that the accused himself is in the Poltava pre-trial detention center, he filed a statement stating that he was unable to arrive at the PF department. And he asked for the opportunity on his behalf by proxy to draw up papers by his wife or lawyer.

Nevertheless, in response to the appeal of A. Melnik regarding the recalculation of pensions, the PF responded that it was necessary for him to come personally to the department of the

pension fund. By the decision of the Gadyatsky district court, in response to the request of A. Melnik, it was decided to send materials to the management of the pre-trial detention center in order to ensure the possibility of a personal visit to the PF. Despite this, for several months now, according to the lawyer, no action has been taken.

The ISHR insists that social protection, including for persons with disabilities, should be an important component of public policy. The restriction of the rights and freedoms of persons in custody should be carried out exclusively to the extent that is unavoidable if a person is held in custody. In a decision in the “Kalashnikov v. Russia” case, the ECtHR noted that the well-being of persons in custody should be adequately guaranteed by the state, taking into account the requirements of the deprivation of liberty. Considering the fact that a person’s detention does not deprive him of the right to social security, the inability to provide him with the opportunity to reissue a disability pension cannot be considered as such that meets the requirements of the European Convention.

At the hearing on January 23, the court considered the application for changing the measure of restraint for A. Melnik and decided to refuse to satisfy it. Considering the fact that the court announced only the operative part of the ruling, ISHR will continue to clarify the details of this hearing.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 02.12.20)

On February 11-13, hearings were held in the Gadyatsky District Court of the Poltava Region in the case of the head of the “Visit” television company Alexander Melnik, who is one of the three accused (together with A. Kryzhanovsky and I. Kunik) in the murder of the mayor of Kremenchug A. Babayev and judge of the Kremenchug court A. Lobodenko. All three sessions were devoted to the consideration of the prosecutor’s applications for an extension of the measure of restraint by the accused and the defense’s applications for changing the measure of restraint.

As in previous petitions, the prosecution refers to the following circumstances:

1) The severity of the possible punishment in the form of life imprisonment, the prosecutor considers the basis that the accused can hide from the court.

However, the European Court of Human Rights admits that suspicion of serious crimes may initially justify detention. At the initial stage of the proceedings, the need to ensure the proper conduct of the investigation and to prevent the escape or re-commission of the offense may justify detention. However, despite the fact that the severity of the sentence is an important element in assessing the risk of escaping or reoffending, the Court recalls that the gravity of the charges alone cannot justify the lengthy pre-trial detention (paragraph 102, ECtHR judgment “Panchenko v. Russia”).

As regards to the risk of escape, the Court recalls that such a danger cannot be measured solely on the basis of the severity of the sentence faced by the defendant (paragraph 106, Decisions of the ECtHR “Panchenko v. Russia”).

2) Pressure on victims and witnesses. In paragraph 73 of the ECtHR judgment “Lyu-bimenko v. Russia,” the Court accepts that the authorities could reasonably believe that the risk of pressure on witnesses and jurors was present initially. However, the Court is not convinced that this basis alone could justify the entire five-year period of the applicant’s detention. Indeed, the domestic courts referred to the risk of obstructing the trial in a short form, without indicating any aspect of the applicant’s nature or behavior, in support of his conclusion that he would likely resort to intimidation. In the Court’s view, such a generally formulated risk cannot justify the applicant’s detention for more than five years. The domestic courts did not take into account the fact that this basis inevitably became less and less relevant over time. The court is not convinced that throughout the entire period of the applicant’s detention there were substantial grounds for fear that he would interfere with witnesses or jurors or otherwise impede the examination of the case, and, of course,

not to outweigh the applicant’s right to have a trial within a reasonable time or to release him pending trial.

3) The impossibility of applying a milder measure of restraint is motivated by the fact that there is no control over the communication of the accused at the place of residence, there is no full control in the days of court hearings due to imperfect electronic controls.

It should be noted that during the consideration of the application of methods to ensure criminal proceedings, the parties must submit to the court evidence of the circumstances to which they refer (part 5 of article 132 of the Criminal Procedure Code of Ukraine). At the same time, the prosecutor limited himself only to formal descriptions of possible violations by the accused, not referring to specific evidence.

In the application for the extension of the measure of restraint, the prosecution found it possible to refer to the case of the ECtHR “Labita v. Italy”, where in paragraph 152 it is stated that in accordance with the judicial practice of the Court, the question of the reasonableness of the term of imprisonment cannot be assessed in abstracto. The reasonableness of the accused’s detention must be determined in each case, depending on the particulars of the case. Prolonged detention may be justified if there are specific indicators of the urgency of the public interest, which, despite the presumption of innocence, prevail over respect for individual freedom.

The first for national judicial authorities is the obligation to ensure that the pre-trial detention of the accused does not exceed a reasonable time. To do this, they are obliged to consider all the facts for and against the existence of a genuine public interest, taking due account of the presumption of innocence, not applying the rule on respect for individual freedom, and to state all these factors in a decision that refuses the applicant’s release. It is on the basis of these arguments for making a decision and the facts mentioned by the applicant in his complaints that the Court is called upon to decide whether there has been a violation of Article 5 § 3 of the Convention (§ 152 “Labita v. Italy”).

It should be noted that already in the next § 153 of the ECtHR case of “Labita v Italy”, it is stated that the persistence of a reasonable suspicion that the arrested person has committed a crime is the (most important) sine qua non condition for the legality of a lasting conclusion, but after a lapse of time insufficient. In such cases, the Court must establish whether the judicial authorities provided the basis for the continued deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also find out that the national authorities demonstrated “special diligence” in conducting the investigation and consideration of the case.

For reference: in this case (“Labita v. Italy”), the accused stayed in custody for 2 years and 7 months.

In paragraphs 163, 164 of the decision in the case of the ECtHR “Labita v. Italy”, the Court notes that the grounds for the relevant decisions were reasonable, at least in the beginning, although they were general in nature. The authorities referred to the prisoners as a whole and only abstractly mentioned the essence of the alleged crime. They did not point out any factors demonstrating that the risks to which they referred exist and did not establish that the applicant, who had not previously been prosecuted and whose role in the organization of the mafia type was allegedly insignificant (the prosecutor requested 3-year sentence in this case) was a danger. The fact that the charges against the applicant were based on evidence, which over time became weaker and not stronger, was not taken into account.

The Court considers that the grounds indicated in the contested decisions are not sufficient to justify the applicant’s preliminary detention for 2 years and 7 months. Recall that the defendants A. Melnik, A. Kryzhanovsky, I. Kunik have been in custody for more than 5.5 years.

The defense in the petition for changing the measure of restraint to Melnik, indicated the following circumstances:

1) Melnik is a participant in the liquidation of the Chernobyl accident, as a result of which he is a disabled person of group 2, has heart

disease.

2) Detention for more than 5 years is a violation of reasonable time limits. In paragraph 9 of the case of the ECtHR “Levchenko and Others v. Ukraine” (which, as mentioned earlier, includes the case of one of the previously accused - “I. Pasichny v. Ukraine”), the court examined all available materials and considers that in this case the length of pre-trial detention was excessive. Due to the fact that the case of the ECtHR “Levchenko v. Ukraine” is being considered in relation to the previously accused I. Pasichny (according to his statement), the fact that the court completely disregarded the requirements of this case is of deep concern to the International Society for Human Rights.

3) The formal nature of the prosecutor’s request for an extension of the measure of restraint. Risks are not confirmed by actual circumstances.

4) Further extension of custody makes it impossible to exercise the right to retirement benefits. In accordance with Art. 10 of the Convention on the Rights of Persons with Disabilities, the participating States reaffirm the inalienable right of everyone to life and take all necessary measures to ensure its effective implementation by persons with disabilities on an equal basis with others.

At the same time, the participating States recognize that persons with disabilities have the right to the highest attainable standard of health without discrimination on the basis of disability. Participating States shall take all appropriate measures to ensure access by persons with disabilities to gender-sensitive health services, including rehabilitation for health reasons (Article 25 of the Convention).

The defense appealed to the court (November 4, 2019, December 17, 2019) to ensure that it is possible to exercise the right to retirement benefits by organizing a personal presence in the pension fund to arrange a pension for A. Melnik. According to the statement of the lawyers, the court, having not examined the applications on the merits, redirected them to the pre-trial detention center.

Moreover, in accordance with Art. 42 of the

Code of Criminal Procedure of Ukraine, the accused has the right to file motions, and in accordance with Art. 350 of the Code of Criminal Procedure of Ukraine, the court decides on the fact of considering the application.

5) Torture. The defense claims that the transportation of the defendants has signs of torture, since the distance from the city of Poltava to Gadyach is 116 kilometers one way in extremely uncomfortable conditions. On days of court hearings, the accused are deprived of walks in the fresh air, and often breakfast.

In paragraph 108 of the “Yakovenko v. Ukraine” case, the court stated the following: with regard to the transport of prisoners, the ECtHR considered that individual compartments with an area of 0.4, 0.5 or even 0.8 square meters are not suitable for transporting a person, no matter how short the duration.

Based on the results of the consideration of the petitions, the court ruled to extend the measure of restraint for the accused for a period of 60 days.

It should also be noted that the International Society for Human Rights, in advance, requested the court to broadcast the court hearing on February 13, 2020 on the portal of the Judicial Authority of Ukraine. Unfortunately, the court was not able to broadcast “because of the consideration of the prosecutor’s request for an extension of the measure of restraint”. We do not quite understand this wording, however, the ISHR will re-send a letter to the Gadyatskiy District Court for video broadcasting when considering the extension of the measure of restraint for the accused. We hope that such cases do not tend to limit the publicity of the trial.

MMonitoring of the case of Alexander Kryzhanovsky and Alexander Melnik (hearing on 02.06.20)

On February 6, 2020, the Kharkov Court of Appeal heard criminal proceeding on the appeal of A. Kryzhanovsky and A. Melnik against the decisions of the Gadyatsky District Court of the Poltava Region, which extended their term of detention.

Alexander Kryzhanovsky and Alexander Melnik are charged with the murder of the mayor of Kremenchug A. Babaev and the judge of the Kremenchug court A. Lobodenko. The term of detention of the accused exceeds 5 years. The ISHR has been monitoring this lawsuit since 2017 and more than once found violations of the European Convention. A detailed report on violations in this case can be found on the official website of the ISHR.

For convenience, we will break this report into two parts. The first will be devoted to the consideration of the appeal of A. Kryzhanovsky, and the second - to the appeal of A. Melnik.

1. A. Kryzhanovsky indicated that he had been in a pre-trial detention center for 65 months and the extension of his detention was automatic.

According to paragraph 3 of Art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) after a certain period of time, it is just the existence of reasonable suspicion that does not justify deprivation of liberty, and the courts must give other reasons for the extension of detention (Judgment in the case of “Borisenko v. Ukraine”, para. 50). Moreover, these grounds must be clearly indicated by the national courts (“Eloev v. Ukraine”, para. 60, “Kharchenko v. Ukraine”, para. 80).

The European Court of Human Rights (hereinafter referred to as the Court) often found a violation of Art. 5 of the Convention in cases where national courts continued the detention of the defendant, referring mainly to the gravity of the charges and using template language, without even considering specific facts or the possibility of alternative measures (“Kharchenko v. Ukraine”, paras. 80-81; “Tretyakov v. Ukraine” para. 59).

The existence of a reasonable suspicion of a crime committed by a detained person is a prerequisite for the legality of its continued detention, but after the lapse of time such a suspicion will not be enough to justify prolonged detention. The Court never attempted to translate this concept into a clearly defined

number of days, weeks, months or years, or at different times depending on the gravity of the crime. Once “smart suspicion” is no longer sufficient, the court must establish that the other grounds given by the courts continue to justify the person’s deprivation of liberty (“Maggie and Others v. The United Kingdom”, paras. 88-89).

The Court also recalls the immutability of the grounds for suspicion. The fact that the arrested person has committed an offense is a *sine qua non* condition for his continued detention to be considered legal, but after a while this condition is no longer sufficient. Then the Court must establish that the other grounds on which the decisions of the judiciary are based continue to justify the deprivation of liberty. If these grounds turn out to be “relevant” and “sufficient”, then the Court will ascertain whether the competent national authorities found “special good faith” in the conduct of the proceedings (“Labita v. Italy”, para. 153).

In addition, the accused indicated that the appealed court decision had lost its force, since the period of detention was extended until December 22, 2019. And today is February 6, 2020.

Attorney of A. Kryzhanovsky stated that for reasons independent of the district court and the court of appeal the question could not be considered, since this is no longer relevant. The second lawyer drew attention to the need to close the appeal proceedings based on exhaustion of the action by the appealed court decision.

As a result of the judicial review, the appeal was rejected.

The impossibility of timely consideration of the case arose due to the lack of judges. At the first automated formation of the college of judges, the lawyer of the accused stated about the challenge of the judge Grishin P.V. As a result, while the composition of the judges was being re-determined, the relevance of the consideration of the appeal was lost. However, such a situation, in the opinion of the International Society for Human Rights, restricts person’s right of access to a court. A person has the right not only to initiate proceedings,

but also the right to count on the solution of his question.

2. When considering the appeal of A. Melnik, the lawyer stated about the challenge of Judge S. Shchabelnikov since he had already recused himself and this issue had already been resolved by previous decisions. As a result, the application was granted. The automated system will form a panel of judges for the third time. However, this is not necessary. Indeed, the next decision to refuse to satisfy the appeal because its consideration is no longer relevant does not affect the right of A. Melnik and other accused to consider the case within a reasonable time.

It should also be noted that on February 12, 2020, the Gadyatskiy District Court is once again considering the issue of extending the measure of restraint for A. Melnik, A. Kryzhanovsky and another accused in this case, I. Kunik. Thus, given the automatic extension of the measure of restraint for the accused, the new court ruling on the extension of detention will be the second one that was scheduled for consideration by the Kharkov Court of Appeal. That even more calls into question the realization of the right to appeal the court ruling on the appointment or extension of a measure of restraint.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (session 03.11.20)

On March 11, a regular court session was held in the Gadyatsky District Court of the Poltava Region in the case of the head of the “Visit” television company Alexander Melnik, who is one of the three accused (together with A. Kryzhanovsky, I. Kunik) in the murder of the mayor of Kremenchug A. Babayev and Judge of the Kremenchug court A. Lobodenko.

At the hearing, the court continued the study of written evidence.

In addition, for March 11 was scheduled consideration of appeals against the decisions of the Gadyatskiy court in the Kharkov Court of Appeal to extend the measure of restraint to the accused A. Kryzhanovsky and A. Melnik.

During the judicial review, the court announced a break for the defense of Melnik and

Kryzhanovsky to participate in the consideration of appeals in the video conference mode. Lawyers, during the consideration of appeals, filed applications to challenge the board of the court, which were denied. Subsequently, appeals against the decisions of the Gadyatsky District Court of December 17, 2019 were examined on the merits. The measure of restraint, by this definition was extended until 02/14/2020. Thus, as of the time of consideration of the appeal, the determination has expired long ago (the determination to apply the measure of restraint expires after the expiration of the determination (Article 203 of the Code of Criminal Procedure of Ukraine).

ISHR experts have already repeatedly pointed out the ineffectiveness of appeal mechanisms for determination in resonant cases. Firstly, after many years of judicial review in the region, it is difficult to form a panel in the court of appeal. The vast majority of judges of the Poltava Court of Appeal in one way or another took part in this case. Thus, judges recuse themselves, after which the Supreme Court determines jurisdiction in another region. During this time, the definition expires. Secondly, in other cases, for example, in the case of Alexander Chibirdin, the ISHR has already faced a situation where the appellate court officially, because of congestion, ordered the consideration of the appeal to extend the measure of restraint in the form of detention after it has lost its validity period. In fact, the accused in such cases are deprived of the opportunity to exercise the right of appeal against detention and this is happening systematically. This situation is of particular concern to the International Society for Human Rights for the reason that observers often state that there is insufficient (according to the criminal procedure) justification by the prosecutor of the need for an exceptional measure of restraint, or even file a petition without justifying the risks provided for in the Criminal Procedure Code.

The Kharkov Court of Appeal once again dismissed the appeal, because the validity of the decision of the Gadyatskiy court has been exhausted.

After the break, the Gadiaksky court resumed the hearing and continued to examine the evidence in the case.

The prosecutor read out a request for adding an optical disk with a recording of the testimony of the accused I. Kunyk obtained at the pre-trial investigation stage.

The defense categorically objected to the satisfaction of the petition of the prosecution, indicating that in accordance with part 4 of art. 95 of the Code of Criminal Procedure of Ukraine, the court can substantiate its findings only on the evidence that it directly perceived during the trial. The court does not have the right to substantiate its decisions with evidence that was given to the investigator, prosecutor, or refer to them (part 4 of article 95 of the Code of Criminal Procedure of Ukraine).

The European Court of Human Rights notes that although Article 6 of the ECHR guarantees the right to a fair trial, it does not establish any rules for the admissibility of evidence as such, which is primarily a regulatory issue in accordance with national law (“Schenk v. Switzerland”, para. 46). Consequently, the Court should not determine in principle whether specific types of evidence could be admissible, including the testimony of the absentee accused, or whether the applicant was guilty or not. The question that needs to be answered is whether the proceedings as a whole, including the method of obtaining evidence, were fair (“Lutsenko v. Ukraine”, paragraph 42).

The Court has previously found that in cases where the domestic judicial authorities are confronted with several conflicting versions of the truth proposed by the same person, their final preference for the statement made to the investigating authorities over the statement made in open court does not raise the issue in accordance with the Convention, where this preference is justified and the statement itself was given at the person’s own will. On the other hand, the credibility of evidence will be undermined if it is obtained in violation of the right to silence and privileges against self-incrimination. In particular, the right not to incriminate oneself implies that

the criminal prosecution seeks to prove its case against the accused, without resorting to evidence obtained using methods of coercion or harassment, contrary to the will of the accused. Where doubts arise as to the reliability of a particular source of evidence, the need to confirm this with evidence from other sources is correspondingly higher (paragraph 49 “Lutsenko v. Ukraine”).

The panel of judges, having consulted on the spot, decided to attach the evidence to the case, and give an assessment to them in the deliberation room during the sentencing.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (session 03.12.20)

On March 12, in the Gadyatsky District Court of the Poltava Region, a regular court session was held in the case of the head of the “Visit” television company Alexander Melnik, who is one of the three accused (together with A. Kryzhanovsky, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babayev and Judges of the Kremenchug court A. Lobodenko.

The court session, at which the prosecutor continued to read out the written evidence, was held by video conference with the accused Kryzhanovsky and Kunik.

The prosecutor filed a petition for the study of an optical disc, on which, according to state prosecutors, car similar to the car of the murdered mayor Kremenchug Babaev and a VAZ 2108 were recorded.

The defense objected to the evidence being attached to the case in view of its apparent inadmissibility. First of all, lawyers insisted on the unknown source of information on disk, as well as the method of obtaining information. Also, the defense claims that the disc inspection protocol was falsified. In the protocol, as witness, citizen Fedorov is indicated. The defense provided explanations and a report that Fedorov did not live and never lived at the address indicated in the protocol. In the lawsuits of the same case in the Kobelyatsky court, earlier it was not possible to find the specified witness for the interrogation.

The case law of the European Court of Human Rights in determining the term “fair trial” requires consideration of whether the defense rights are respected. In particular, it is necessary to verify whether the defense was given the opportunity to challenge the authenticity of the evidence and object to its use. In addition, in the opinion of the ECtHR, it is necessary to take into account the quality of the evidence, including the question of whether its reliability or the accuracy of the circumstances in which it was obtained is called into question. The burden of proof lies with the prosecution, and any doubt should be of benefit to the accused (paragraph 57, “Jean v. Ukraine”).

The Gadyatsky court granted the prosecutor’s request and attached the protocol with an optical disk.

It should be noted that the defense has repeatedly pointed out the lack of motivation for such court rulings.

The European Court of Human Rights in §§ 59.60.61 of “Jean v. Ukraine”, emphasizes that the Convention is not intended to guarantee rights that are theoretical or illusory, but rights that are practical and effective. This is especially true for the guarantees enshrined in article 6, given the important place that a right to a fair trial in a democratic society takes with all the guarantees provided for in this article. For the right to a fair trial to remain sufficiently “practical and effective”, Article 6, paragraph 1, shall be interpreted in the light of the preamble to the Convention, which, inter alia, proclaims the rule of law the common heritage of the Contracting States. Therefore, no provision of domestic law should be interpreted and applied in a manner that is incompatible with the obligations of the state under the Convention.

In addition, in accordance with the established case-law of the Court, the right to a fair trial cannot be considered effective if the requests and observations of the parties are not really “heard”, that is, duly examined by the court.

Finally, in accordance with the Court’s established case-law, reflecting the principle of the proper administration of justice, the de-

cisions of the courts must duly indicate the reasons on which they are based. The Court, in particular, ruled that, ignoring the specific, relevant and important arguments of the defense, the domestic courts are not fulfilling their obligations under Article 6 § 1 of the Convention.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (session 04.08.20)

On April 8, a regular court session was held in the Gadyatsky District Court of the Poltava Region in the case of the head of the “Visit” television company Alexander Melnik, who is one of the three accused (together with A. Kryzhanovsky, I. Kunik) in the murder of the mayor of Kremenchug A. Babayev and Judge of the Kremenchug court A. Lobodenko.

At this hearing, the prosecutor’s applications for extending the detention of the accused Melnik and Kryzhanovsky were considered. Recall that the accused Alexander Melnik (like A. Kryzhanovsky and I. Kunik) has been detained since September 2014, which amounts to a prison term of more than 5.5 years. And only in the Gadyatskiy district court the case has been considered for almost 2 years.

The International Society for Human Rights has been monitoring this case since 2017. The group of observers is most concerned about violations related to the lack of adequate medical assistance to the accused, ignoring the decision on this proceeding and the general practice of the ECtHR, etc. The ISHR paid particular attention to the automatic extension of the measure of restraint in the form of detention for all three accused.

Throughout the monitoring period of this proceedings, a group of prosecutors, stating a request for an extension of the measure of restraint in the form of detention, limited themselves to voicing the list of risks identified by Article 177 of the Code of Criminal Procedure of Ukraine. Without their justification, as well as the justification of why an alternative measure of restraint, for example, round-the-clock house arrest, cannot be applied to the accused. However, such requests (formally not meeting the requirements of the CPC) were systemati-

cally granted by the court.

In order to prevent the prosecutor from abusing his powers, implementing the principle of publicity of court hearings, as well as in connection with quarantine measures related to the spread of COVID-19 virus infection, which excludes the physical presence of observers at court hearings, the ISHR requested the Gadyatskiy district court to broadcast the court hearings on 8 and April 9, 2020. The International Society for Human Rights expresses its gratitude to the court for the satisfaction of this request (statement), which testifies to the openness of the court to the human rights community.

However, even the video broadcast could not be reflected in the validity of the prosecutor’s request for an extension of the detention period. Although, it must be admitted that it has become a little more informative. As usual, the prosecutor D. Moskalenko pointed out that the risks did not decrease and only detention could guarantee A. Melnik’s fulfillment of his procedural duties and prevent the possible risks.

The essence of the hearing. In his application, the prosecutor D. Moskalenko indicated the following: 1. The severity of a possible sentence of life imprisonment is the reason that the accused can hide from court; 2. The “procedural sabotage” aimed at delaying the consideration of the case of the defense (the statement of the defense’s petition to provide the accused Melnik with mobile communications and the Internet) indicates that even with such a measure of restraint, A. Melnik is trying to evade the court; 3. Imperfection of electronic controls; 4. Pressure on the victim Shlyakhova - by discrediting her lawyer Kononenko in court; 5. The presence of Melnik significant financial resources; 6. Risk of pressure on witnesses. ECtHR case law.

1. With regard to the gravity of the possible punishment, the European Court of Human Rights admits that suspicion of serious crimes may initially justify detention. At the initial stage of the proceedings, the need to ensure the proper conduct of the investigation and to prevent the escape or re-commission of the of-

fense may justify detention. However, although the severity of the sentence is an important element in assessing the risk of escaping or re-offending, the Court recalls that the gravity of the charges alone cannot justify the lengthy periods of pre-trial detention (§ 102, “Panchenko v. Russia”). Recall that A. Melnik has been kept in custody for more than 5.5 years, which in no way can be considered the “initial stage”.

2. As regards the risk of escape, the Court recalls that such a danger cannot be measured solely on the basis of the severity of the sentence faced (§ 106, “Panchenko v. Russia”). The motives of the prosecution for pressure on witnesses and victims should be supported by evidence. In addition, for the period of quarantine measures, all borders of Ukraine (both air and ground) are closed. The risk of escaping the court by escape at this stage is substantially minimized.

3. In § 73 of the ECtHR judgment “Lyubimenko v. Russia”, the Court accepts that the authorities could reasonably have considered that the risk of pressure on witnesses and jurors was initially present. However, the Court is not convinced that this basis alone could justify the entire five-year period of the applicant’s detention. Indeed, the domestic courts referred to the risk of obstructing the trial in a short form, without indicating any aspect of the applicant’s nature or behavior, in support of his conclusion that he would likely resort to intimidation. In the Court’s view, such a generally formulated risk cannot justify the applicant’s detention for more than five years. The domestic courts did not take into account the fact that this basis inevitably became less and less relevant over time. The motivation of the courts did not develop in order to reflect the evolving situation and to check whether this basis remained sufficient at an advanced stage of the proceedings. Thus, the Court is not convinced that throughout the entire period of the applicant’s detention there were substantial grounds for fear that he would interfere with witnesses or jurors or otherwise impede the examination of the case, and, of course, not to outweigh the applicant’s right to a trial within a reasonable time or to release

pending trial.

The International Society for Human Rights cannot assess the arguments of the prosecution about the “procedural sabotage” of the defense, due to the fact that such terminology is absent in the procedural law. A group of observers who have been monitoring this proceeding for several years asked to indicate that the prosecutor’s words about pressure on the victim, about threats to the prosecutor, cynical and impudent statements, cannot be confirmed. Observers believe that these words may have the nature of manipulations by the prosecution on camera in connection with the video broadcast.

Melnik’s lawyer, Ruslan Lazorenko, filed a motion to amend the measure of restraint, which is motivated by the following:

1) Melnik is a participant in the liquidation of the Chernobyl accident, as a result of which he is a disabled person, has numerous chronic diseases, confirmed by the protocols of medical examinations. In addition, over time, the number and severity of diseases only grows. 2) Repeatedly elected as a member of a local parliament; 3) Member of public organizations; 4) A measure of restraint was chosen on the basis of a motion by the prosecutor D. Khodatenko, who was not authorized in this criminal proceeding; 5) Detention of more than 5 years is a violation of reasonable time limits. In § 9 of the ECtHR case “Levchenko and Others v. Ukraine” (containing a complaint about this proceeding), the Court having examined all available materials, considers that in this case the length of the pre-trial detention of the applicants was excessive. The fact that the national court completely disregarded the provisions of the ECtHR in this case is of great concern to the human rights community. 6) The formal nature of the prosecutor’s request for an extension of the measure of restraint. Risks are not confirmed by actual circumstances.

Lawyer Mironov said that the prosecutor’s justification for the suspicion is based on the testimony of the accused A. Kryzhanovsky, which he gave during the pre-trial investigation. At the same time, in court, Alexander Kryzhanovsky denied this evidence, referring

to the use of torture and pressure from the prosecution on him and his family.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (session 04.09.20)

On April 9, a regular court session was held in the Gadyatsky District Court of the Poltava Region in the case of the head of the “Visit” television company Alexander Melnik, who is one of the three accused (together with A. Kryzhanovsky, I. Kunik) in the murder of the mayor of Kremenchug A. Babayev and Judge of the Kremenchug court A. Lobodenko.

At the hearing, the court continued to consider the prosecutor’s request for an extension of the measure of restraint to the accused A. Kryzhanovsky and I. Kunik.

The prosecution claims that the trial in the Gadyatsk court lasts 1 year and 9 months. During this time, written evidence for one episode and only part of the written evidence for another episode were studied. Material evidence and expert examinations remained unexplored, and witnesses for both episodes were not questioned.

The prosecutor D. Moskalenko at the session on April 9 continued to assert that the position of the defense of A. Kryzhanovsky was agreed with the other defendants and had signs of “procedural sabotage”. Speaking of “procedural sabotage”, the prosecution points out that the defense of Alexander Melnik makes petitions that are not related to the consideration of the case. Surprisingly, the “procedural sabotage” of A. Kryzhanovsky’s defense is also justified by the actions of Melnik’s defense.

ISHR experts note the fact that the application is motivated by circumstances not prescribed by law. The court, in turn, does not give an assessment of the foregoing, which may indicate agreement with the charge of “procedural sabotage” of the defense. At the same time, there is no groundless fear that the criminal proceeding is not performed in this case in the context of ensuring the rights, freedoms and legitimate interests of participants in the proceeding, including the justification of the grounds provided for in the Code of Criminal Procedure to extend detention.

Justifying the existence of risks, the prosecutor Moskalenko noted the following circumstances: 1) The severity of a possible sentence of life imprisonment is the reason that the accused can hide from court; 2) electronic controls are not perfect; 3) the interrogation of a witness, I. Pasichny, has not yet been carried out (note of one of the accused in the case, who made a deal with the prosecutor and has already been released); 4) A. Kryzhanovsky served in the Soviet army; 5) in Ukraine there are territories beyond the control of the Ukrainian authorities.

Each report on the case of A. Melnik and others, which includes an analysis of the prosecutor’s request for an extension of the measure of restraint in the form of detention, contains references to the decisions of the European Court of Human Rights, which states that the ECtHR recognizes that the suspicion of serious crimes may initially justify detention. At the initial stage of the proceedings, the need to ensure the proper conduct of the investigation and to prevent the escape or re-commission of the offense may justify detention. However, although the severity of the sentence is an important element in assessing the risk of escaping or re-offending, the Court recalls that the gravity of the charges alone cannot justify the lengthy periods of pre-trial detention (§ 102, “Panchenko v. Russia”). As regards the risk of escape, the Court recalls that such a danger cannot be measured solely on the basis of the severity of the sentence faced (§ 106, “Panchenko v. Russia”).

Nevertheless, every 2 months, when the time comes to resolve the issue of measures of restraint, it is this risk that underlies both the petition of the prosecutor and the court ruling. And the International Society for Human Rights states that the detention of the accused is unfounded and has automatic, i.e. one that does not include new risks and any new justifications, nature.

The motives of the prosecution for pressure on witnesses and victims should be supported by evidence.

In § 73 of the ECtHR judgment “Lyubimenko v. Russia”, the Court accepts that the

authorities could reasonably have considered that the risk of pressure on witnesses and jury members was initially present. However, the Court is not convinced that this basis alone could justify the entire five-year period of the applicant's detention. Indeed, the domestic courts referred to the risk of obstructing the trial in a short form, without indicating any aspect of the applicant's nature or behavior, in support of his conclusion that he would likely resort to intimidation. In the Court's view, such a generally formulated risk cannot justify the applicant's detention for more than five years. The domestic courts did not take into account the fact that this basis inevitably became less and less relevant over time. The motivation of the courts did not develop in order to reflect the evolving situation and to check whether this basis remained sufficient at an advanced stage of the proceedings. Thus, the Court is not convinced that throughout the entire period of the applicant's detention there were substantial grounds for fear that he would interfere with witnesses or jurors or otherwise impede the examination of the case, and, of course, not to outweigh the applicant's right to hold a trial within a reasonable period of time or to release pending trial.

The prosecution, earlier on February 2020, in a petition for an extension of the measure of restraint, cited the case of the ECtHR "Labita v. Italy". But after the ISHR experts revealed the manipulation and selective quoting by the prosecutor of the text of this decision, already in this petition the prosecutor does not speak about the name of the ECtHR case, but still quotes it.

Section 152 of the ECtHR "Labita v. Italy" states that in accordance with the jurisprudence of the Court, the question of the reasonableness of the term of imprisonment cannot be assessed in "abstracto". The reasonableness of the accused's detention must be determined in each case, depending on the particulars of the case. Prolonged detention may be justified if there are specific indicators of the urgency of the public interest, which, despite the presumption of innocence, prevail over respect for individual freedom.

The first for national judicial authorities is the obligation to ensure that the pre-trial detention of the accused does not exceed a reasonable time. To do this, they are obliged to consider all the facts for and against the existence of a genuine public interest, taking due account of the presumption of innocence, not applying the rule on respect for individual freedom, and to state all these factors in a decision that refuses the applicant's release. It is on the basis of these arguments for making a decision and the facts mentioned by the Applicant in his complaints that the Court is called to decide whether there has been a violation of Article 5 § 3 of the Convention (§ 152 "Labita v. Italy").

It should be noted that already in the next § 153 of the ECtHR case of "Labita v Italy", it is stated that the persistence of a reasonable suspicion that the arrested person has committed a crime is the (most important) sine qua non condition for the legality of a lasting conclusion, but after a lapse of time insufficient. In such cases, the Court must establish whether the judicial authorities provided the basis for the continued deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also find out that the national authorities demonstrated "special diligence" in conducting the investigation and consideration of the case.

In this case, for reference, the accused stayed in custody for only 2 years and 7 months.

In paragraphs 163, 164 of the ECtHR "Labita v. Italy" case, the Court observes that the grounds for the relevant decisions were reasonable, at least in the beginning, although they were general in nature. The authorities referred to the prisoners as a whole and only abstractly mentioned the essence of the alleged crime. They did not point out any factors demonstrating that the risks to which they referred exist and did not establish that the applicant, who had not previously been prosecuted and whose role in the organization of the mafia type was allegedly insignificant (the prosecutor requested 3-year sentence in this case) was a danger. The fact that the charges against the applicant were based on

evidence, which over time, became weaker and not stronger, was not taken into account.

The Court considers that the grounds specified in the contested decisions are not sufficient to substantiate the applicant's preliminary detention for 2 years and 7 months.

Thus, in the context of the decision of the ECtHR, by which the prosecutor motivates his application, the extension of the measure of restraint for the accused in this case is unfounded.

The defense filed a motion to change the measure of restraint to A. Kryzhanovsky and I. Kunik. The defense's position consists in the groundlessness of the prosecutor's motions and the lack of evidence, the poor state of health of the accused, the introduction of an emergency and quarantine regime (the ban on gathering more than 2 people in one place), and the absence of facts of non-fulfillment of procedural obligations. The ISHR insists that due to quarantine measures, due to which communication between the cities of the country is suspended, and also air and almost all land borders are blocked, it is necessary to take into account the reduced risk of hiding from the court.

In addition, special attention should be paid to proceedings in which the terms of detention already reach the minimum penalty prescribed by the Criminal Code (including in cases covered by the so-called "Savchenko law"). In the present case, the period of detention had already exceeded 5.5 years and more than six months ago, in paragraph 9 of the ECtHR case of "Levchenko and Others v. Ukraine", the Court having examined all available materials, concluded that in this case the length of pre-trial detention under the applicants' custody is excessive. In view of the fact that the case of the ECtHR "Levchenko and Others v. Ukraine" is being considered in relation to the previously accused I. Pasichny (on his statement), the fact that the court completely disregarded the requirements of this case is of deep concern to the expert council of the ISHR.

The court ruled to extend the measure of restraint to all the accused.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing on 05/20/20)

On May 20, in the Gadyatsky District Court of the Poltava Region, a regular court session was held in the case of the head of the "Visit" television company Alexander Melnik, who is one of the three accused (together with A. Kryzhanovsky, I. Kunik) in the murder of the mayor of Kremenchug A. Babayev and Judge of the Kremenchug court A. Lobodenko.

The court continues to consider written evidence of the prosecution.

At this hearing, a series of evidence related to temporary access to belongings and documents was examined. The prosecution submitted to the court the ruling of the investigating judge (permission to conduct temporary access), the temporary access protocol and an optical disk.

The purpose of temporary access is to obtain information from a mobile operator about calls of mobile terminals, which according to the investigation belong to the accused, as well as addresses of stations that recorded these calls.

The defense categorically objected to the inclusion of this evidence in the case, indicating that the investigator had received these documents without having the authority to do so. Temporary access is always preceded by the appropriate permission of the investigating judge. Like all court decisions, the definition of an investigating judge must be motivated and justified. The defense insisted on a mandatory retrospective assessment of the validity of the determination of the investigating judge.

The International Society for Human Rights notes that some of the objections of the defense were reflected in the following decisions of the ECtHR.

In paragraph 81 of the ECtHR judgment in "Malone v. The United Kingdom" (Application No. 8691/79), the Court stated that the existence of a law authorizing the interception of communications to assist the police in their investigation and detection functions may be "necessary in a democratic society . . . to prevent unrest or crime." However, the exercise of such powers, because of their inherent secrecy,

carries the risk of abuse, which in some cases can be detrimental to a democratic society as a whole. Moreover, the resulting interference can be considered “necessary in a democratic society” only if the specific secret surveillance system adopted provides adequate guarantees against abuse.

In paragraph 66 of the ECtHR judgment in “Ben Faiza v. France” (31446/12), the Court reiterates that the use of information regarding the date and duration of telephone calls and dialed numbers can create a problem under Article 8, which elements are “an integral part of telephone communications”, although it differs in nature from interception of messages (“PG and JH v. United Kingdom”, No. 44787/98, § 42). In any case, the collection and storage, without the knowledge of the interested party, of personal data regarding the use of the telephone constitutes an interference with the right of the interested party to respect his personal life and correspondence within the meaning of Article 8 (“Copland v. The United Kingdom”, No. 62617/00, § 44).

Consequently, the Court considers that the judicial claim, by virtue of which these documents were transferred to the investigators and used, constituted an interference by a public authority with the person’s right to respect for his private life (§ 68 “Ben Faiza v. France”).

Furthermore, the Court observes that the judicial claims are subject to further judicial review. In subsequent criminal proceedings against the person concerned, criminal courts may review the lawfulness of such a measure and, if it is declared unlawful, the court has the right to exclude evidence obtained in this way from the proceedings (§ 73 “Ben Faiza v. France”).

It should be noted that in accordance with Art. 162 of the Code of Criminal Procedure of Ukraine, information that is held by mobile operators is a secret protected by law. Any unauthorized access to such information constitutes an interference with the rights guaranteed by Art. 8 of the Convention (Right to respect for private and family life).

According to § 233 of the ECtHR judgment in the case of “Roman Zakharov v. Russia” (Ap-

plication No. 47143/06), the review and supervision of secret surveillance measures can take effect in three stages: when ordering surveillance for the first time, during or after it is terminated . . . It is important that the established procedures themselves provide adequate and equivalent guarantees for the protection of his rights. In addition, the values of a democratic society should be respected as accurately as possible in supervisory procedures if the limits of necessity in the sense of paragraph 2 of Article 8 can be exceeded. In an area where there is abuse and can have such harmful consequences for a democratic society as a whole, it is in principle advisable to entrust supervisory control to a judge. Judicial control provides the best guarantees of independence, impartiality and the right procedure.

As for the third stage, after the termination of supervision, the issue of subsequent notification of supervision measures is inextricably linked with the effectiveness of legal remedies in the courts and, therefore, with the availability of effective guarantees against abuse of supervision powers. Thus, the individual should be able to challenge their legitimacy in retrospect.

The Gadyatsky court, after hearing the arguments of the participants, decided to attach evidence of the prosecution to the case, followed by an assessment in the deliberation room when sentencing.

It should be noted that the International Society for Human Rights requested the court to broadcast the court hearing on 05/20/2020. The Gadyatsky District Court provided the broadcast, in connection with which the ISHR is grateful to the court for the openness of the court to the human rights community and the desire to comply with the principle of publicity during the quarantine period, which most courts use to ensure maximum closeness from an outside observer.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing on 05/21/20)

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing on 05/21/20) On

May 20, in the Gadyatsky District Court of the Poltava Region, a regular court session was held in the case of the head of the “Visit” television company Alexander Melnik, who is one of the three accused (together with A. Kryzhanovsky, I. Kunik) in the murder of the mayor of Kremenchug A. Babayev and Judge of the Kremenchug court A. Lobodenko.

At a hearing on May 21, the court continued to examine the evidence of the prosecution, namely, the investigating judge’s definition of temporary access to information about the connections of mobile subscribers, relevant protocols and optical discs.

The defense stated that some of the decisions of the investigating judges on temporary access were not open to the accused and lawyers, and due to the fact that a protocol was drawn up on their basis and an optical disk was obtained, all of the above evidence are unacceptable.

On the issue of opening pre-trial investigation materials to the defense, the ECtHR in its decisions demonstrates a consistent position on the inadmissibility of violating the principle of adversarial and equal rights of the parties.

According to § 77 of the ECtHR decision in the case of “Lisa v. Estonia” (Application No. 59577/08), a fundamental aspect of the right to a fair trial was that criminal proceedings, including elements of such proceedings that are related to the procedure, must be adversarial and that between the prosecution and the defense must be equality of arms. The right to an adversarial trial in a criminal case means that both the prosecution and the defense must be able to learn and comment on the evidence submitted by the other party. In addition, article 6, paragraph 1, requires the prosecution authorities to disclose to the defense all material evidence at their disposal in favor of or against the accused.

Despite statements by the defense that it was impossible to further investigate such documents, the court continued to examine the information on the optical disk. This decision was motivated by the fact that although the definitions of the investigating judges were not open, research of the protocol and the disc is possible, since the latter were opened to the

defense.

ISHR experts believe that only strict adherence to the legal rules for the collection and provision of evidence can guarantee the observance of the rights of participants in a democratic society. On the contrary, well-founded doubts about the legality of the legal procedure should form the basis of the motives of the procedural decisions of the court in such a way as not to violate the right to defense.

At this hearing, the court did not decide on the inadmissibility of the investigated documents and announced a break until 05/26/2020.

Concern is also caused by the fact that the accused Melnik has not been able to apply for a pension for a long time.

Previously, the ISHR has already documented the unsuccessful attempts of the accused to exercise the right to retirement. Melnik repeatedly appealed to the court with a request for his delivery to the pension fund office. At the same time, the court, without making any decision, sent a petition to the remand prison. In turn, the administration of the Poltava remand prison stated that it is impossible to deliver Melnik to a pension fund office without a court order.

In accordance with Art. 10 of the Convention on the Rights of Persons with Disabilities, the participating States reaffirm the inalienable right of everyone to life and take all necessary measures to ensure its effective implementation by persons with disabilities on an equal basis with others.

However, the participating States recognize that persons with disabilities have the right to the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access by persons with disabilities to gender-sensitive health services, including rehabilitation for health reasons (Article 25 of the Convention).

The ISHR experts believe that, with the appropriate powers, the court has stepped aside from resolving the issue of pension for the accused Melnik, which certainly violates his constitutional rights.

We believe that issues with violation of reasonable time limits for the trial, as well as ignoring the court's request for delivery to the pension fund office should be considered in the context of disrespect for the honor and dignity of the participants in the proceeding.

ISHR also expresses deep concern about the current trend of ineffective revision of determinations on extending measures of restraint. Earlier, we have repeatedly recorded that the definitions are reviewed after the expiration date, that is, after the next extension of the detention by the trial court.

As of today, the definition of Kunik regarding the extension of the terms of detention of 12/17/2019 has not been revised in the appeal. At the same time, already twice the Gadyatsky court extended the measure of restraint to the accused I. Kunik.

This state of affairs gives reason to assert a systematic violation of the rights of the accused to a fair trial.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 06.02.20)

On June 2 and 3, in the Gadyatsky District Court of the Poltava Region, a regular court hearing was held in the case of the head of the "Vizit" TV company Alexander Melnik, who is one of the three accused (together with A. Kryzhanovsky, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babayev and the judge of the Kremenchug court A. Lobodenko.

At this hearing, the prosecutor's petitions to extend the terms of detention of accused Melnik, Kunik and Kryzhanovsky were considered.

The accused have been in custody since September 2014 (which is 5.5 years without changing the measure of restraint).

In his petition, prosecutor Moskalenko justified the need to extend the exceptional measure of restraint with the following risks:

1) the presence of uncontrolled territories, which justifies the risk of the possibility of escape. 2) the presence of undisclosed witnesses, which confirms the risk of possible pressure on them. The case law of the ECtHR, in such

cases, speaks of the need to take into account the terms of detention. In § 73 of the ECtHR judgment in the case of "Lyubimenko v. Russia", the Court acknowledges that the authorities could reasonably have believed that the risk of pressure on witnesses and jurors was present in the first place. However, the Court is not convinced that this ground alone can justify the entire five-year period of the applicant's detention. Indeed, the domestic courts referred to the risk of complicating the proceedings in a succinct manner, without indicating any aspect of the applicant's character or conduct, in support of their conclusion that he was likely to resort to intimidation. In the Court's opinion, such a usually formulated risk cannot justify the applicant's detention for more than five years. The domestic courts did not take into account the fact that this ground inevitably became less and less relevant over time. The motivation of the courts did not evolve to reflect the evolving situation and to check whether the sufficiency retained this reason at the advanced stage of the proceedings. Thus, the Court is not convinced that during the entire period of the applicant's detention there were compelling reasons for fear that he would interfere with witnesses or jurors or otherwise obstruct the consideration of the case, and, of course, not in order to outweigh the applicant's right to be prosecuted within a reasonable period of time or release pending trial. 3) The defense declares a motion to declare the evidence inadmissible, therefore it delays the trial. 4) The lawyer of the accused Kryzhanovsky - M. Vasilishin, previously represented the interests of the accused Melnik in civil proceedings (2013). 5) The imperfection of electronic controls, according to the prosecutor, confirms the impossibility of applying a measure of restraint not related to imprisonment. It should be noted that during the consideration of the application of methods of ensuring criminal proceedings, the parties must submit to the court evidence of the circumstances to which they refer (part 5 of article 132 of the Criminal Procedure Code of Ukraine). At the same time, the prosecution in the petition for the extension of the measure of restraint limited

itself to only formal descriptions of possible violations by the accused, without referring to specific evidence. 6) The severity of the possible punishment.

With regard to the severity of the possible penalty, the European Court of Human Rights recognizes that suspicion of serious crimes may initially justify detention. At the initial stage of the proceedings, the need to ensure proper investigation and to prevent escape or reoffending may justify detention. However, while the severity of the sentence is an important element in assessing the risk of escape or reoffending, the Court reiterates that the gravity of the charges alone cannot justify lengthy pre-trial detention (§ 102, “Panchenko v. Russia”).

As regards the existence of a risk of escape, the Court reiterates that such a risk cannot be measured solely on the basis of the severity of the sentence that a person may face (§ 106, “Panchenko v. Russia”).

Also, in the petition for the extension of the measure of restraint, the prosecution once again incorrectly quotes the decisions of the ECtHR and does not link it with its arguments.

The prosecutor referred to § 58 of the ECtHR Judgment in the case of “Bekchiev v. Moldova”, pointing out that the risk of escape is assessed in the context of factors related to character, morality, place of residence, occupation, property status, family ties and all types of ties in the country.

At the same time, in the same decision and in the same paragraph, the court indicated that the expectation of a harsh sentence and the weight of evidence may be appropriate, but they are not decisive, and the possibility of obtaining guarantees can be used to compensate for any risk (“Neumeister v. Austria” § 10).

ISHR experts have been monitoring this trial since 2017, which gives us the right to conclude that the measure of restraint will be automatically extended and that there are no real facts that would confirm the risks. Petitions to the defense are handed in immediately before the hearing, and the reasoning about the advisability of extending the detention often does not meet the requirements of the Criminal Proce-

dure Code. In addition, in this context, one can recall that earlier, when the observer asked the prosecutor about why the prosecution did not support the risks with any justifications and did not try to reasonably explain why no other, softer measure of restraint could be applied, the prosecutor, who, on this stage is a member of the group of prosecutors in the case of A. Melnik and others, said (literally) that for this court it is enough. That certainly casts doubt on the objectivity of the trial.

The defense referred to the formal nature of the prosecutor’s request to extend the measure of restraint. As well as unconfirmed risks by actual circumstances. In addition, in the opinion of the defense, reasonable time limits were violated.

Detention in custody for more than 5 years, based on the case law of the ECtHR, is a violation of reasonable time limits. In § 9 of the ECtHR case “Levchenko and Others v. Ukraine” (which, as we have repeatedly indicated, includes the case of one of the previously accused in this case – “Pasichny v. Ukraine”), the court, having considered all available materials, decided that in this case the duration of the applicants’ detention was excessive.

It should be noted that the International Society for Human Rights asked the court to broadcast the court session from 06.02.2020 and 06.03.2020. The Gadyatsky District Court provided the broadcast. The ISHR is grateful for the openness of the court before the human rights community.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 06.24.20)

On June 24, in the Gadyatsky District Court of the Poltava Region, a regular court hearing was held in the case of the head of the television company “Visit” Alexander Melnik, who is one of the three accused (together with A. Kryzhanovsky, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babaev and judge of the Kremenchug court A. Lobodenko.

At this hearing, the defense provided the court with evidence that is related to the murder episode of the mayor of the city of Kremenchug Babayev Oleg Maidanovich.

Attorney Mironov, attached to the case documents of financial relations between the victim Shlyakhova (wife of the mayor Babayev) and other persons, as well as materials of the trials between them after the murder, which, according to the defense, should be taken into account by the prosecution during the investigation of the case.

In addition, the defense directly speaks about the schemes of taking possession of the property of the mayor Babayev, indicates who (in the opinion of the defense) and under what circumstances carried out these schemes, the implementation of which began shortly before Babayev's death and continued after the murder.

These data can speak not only of the presence of motive among the interested persons, but also of another justified version of the murder.

In the Decision of the Supreme Court dated 01.21.2020 in case No. 754/17019/17, it is stated that the existence of a different version of events is the basis for reasonable doubt about the proof of guilt.

The Supreme Court recalled that the standard of proof beyond reasonable doubt means that the totality of the circumstances of the case, established during the trial, excludes any other reasonable explanation of the event, is the subject of judicial proceedings, except that the alleged crime was committed, and the accused is guilty of committing this crime. . .

This issue must be resolved on the basis of an impartial and unbiased analysis of the prosecution and defense of admissible evidence supporting or against one or another version of events.

The duty of a comprehensive and impartial examination by the court of all the circumstances of the case in this context means that in order to find guilty, which is proven beyond reasonable doubt, the prosecution's version must explain all the circumstances established by the court that are relevant to the event that is the subject of the trial. The court cannot disregard that part of the evidence and the circumstances established on its basis only for the reason that they contradict the prosecution's

version. The presence of such circumstances, for which the prosecution's version cannot provide a reasonable explanation or indicating the possibility of the existence of another version of the incriminated event, is the basis for reasonable doubt about the proof of the person's guilt.

To comply with the standard of proof beyond a reasonable doubt, it is not enough that the prosecution's version is only more likely according to the defense's version. The legislator requires that any reasonable doubt about the prosecution's version of the event be refuted by facts established on the basis of admissible evidence, and the only version that an intelligent and impartial person can explain the totality of facts established in court is the version of events that gives grounds for finding a person guilty on the charge brought against him.

The court did not include all documents of the defense in the case. The materials of the defense, which were provided as corroborating an alternative version of events, different from the one incriminated by the prosecution, were not included. The court motivated by the fact that the documents are not adequate evidence, that is, such that they do not relate to this criminal proceeding.

We believe that the assessment of the evidence by the defense, the court should give in the deliberation room, during the sentencing. Otherwise, the court will not be able to take into account the version of the defense, which the court is obliged to investigate, and the prosecutor - to refute.

On June 25, 2020, the European Court of Human Rights ruled on the complaint of the accused Kunik about the prolonged and unjustified detention.

In accordance with §§ 35-38 of the ECtHR "Bevz and Others v. Ukraine" (on the Kunik application), the Court reiterates that the reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the case at hand and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what is at stake for the applicant in the dispute.

In the main case, “Merit v. Ukraine” (no. 66561/01 of 30 March 2004), the Court found a violation in respect of issues similar to those examined in the present case.

Having examined all the materials presented to it, the Court did not find a single fact or argument capable of persuading it to come to a different conclusion. Having regard to its case-law on this point, the Court considers that in the present case the length of the proceedings against the applicants was excessive and did not meet the “reasonable time” requirement.

Accordingly, there have been violations of Article 6 § 1 of the Convention. Earlier the ECtHR ruled on the complaint of the accused Pasichny. In § 9 of the ECtHR case “Levchenko v. Ukraine”, the court examined all available materials and ruled that in this case the length of the applicants’ pre-trial detention was excessive.

It should be noted that the International Society for Human Rights asked the court to video broadcast the hearing of June 24, 2020. The Gadyatsky District Court provided the broadcast, in connection with which the ISHR is very grateful for the openness of the court towards the human rights community.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing on 07.21.20)

On July 21, 22, 23, in the Gadyatsky District Court of the Poltava Region, a regular hearing was held in the case of the head of the “Vizit” TV company, Alexander Melnik, who is one of the three accused (together with A. Kryzhanovsky, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babayev and the judge of the Kremenchug court A. Lobodenko.

At these sessions, the court continued to examine the evidence of the defense on the alleged murder episode of the mayor of the city of Kremenchug A. Babayev.

The defense once again tried to draw the court’s attention to the fact that the pre-trial investigation body had not worked out the version of involvement in the murder of other persons.

On July 22, 2020, lawyer Lazorenko announced the decision of the Poltava Regional Council of July 14, 2017 on the appeal of the deputies to the High Council of Justice to dismiss the judge of the Kievsky District Court of Poltava Logvinova.

As indicated earlier in the reports of the ISHR in the case of A. Melnik and others, on 12 July 2017, judge Logvinova released the accused A. Melnik and A. Kryzhanovsky from custody. This decision led to an appeal to the High Council of Justice (HCJ) on the initiative of the first deputy head of the Poltava Regional Council E. Kholod. In public speeches, E. Kholod directly stated that the person who ordered the killings was the accused Alexander Melnik. Despite the fact that judge Logvinova also applied to the HCJ with a statement about pressure on her, it was the appeal of the first deputy head of the Poltava Regional Council that got the move, and the judge’s promotion to the Poltava Court of Appeal was suspended. Despite the decision of the HCJ, the International Society for Human Rights considers such actions to be contrary to the principle of justice, acknowledges that such measures taken against Judge Logvinova due to the change in the measure of restraint (which did not entail any negative consequences - the accused have never violated the obligations under the house arrest regime) may be the reason for the automatic extension of an exceptional measure of restraint in the form of detention in custody by the Gadyatsky District Court, contrary to the decisions of the European Court of Human Rights.

By the decision of the Avtozavodsky District Court of Kremenchug, the information indicated in the appeal of the deputies of the Poltava Regional Council was recognized as unreliable.

Let us also recall that the defense argued that it was the first deputy head of the Poltava Regional Council, E. Kholod, who had significant debts to Mayor Babayev before his murder. In addition, the defense directly speaks about the possible seizure of property of the mayor Babayev by E.M. Kholod, they indicate who and under what circumstances carried out

these schemes, the implementation of which began shortly before Babayev's death and continued after the murder.

The ECtHR has repeatedly drawn attention to the inadmissibility of statements by public figures who violate the presumption of innocence.

The ECtHR's sustainable approach to the right to the presumption of innocence is that a violation of this provision will occur if a judgment or statement by an official against a person accused of a criminal offense reflects an opinion of his guilt before it is proven according to the law. It is enough to have, even in the absence of any formal opinion, certain grounds to assume that the court or the official considers the accused guilty. It is essential to distinguish between a message that someone is simply suspected of committing a crime and a clear statement that a person has committed a crime, made in the absence of a final judgment. The court has repeatedly emphasized the importance of the choice of words by officials in their speeches, if they make their statements public before the trial and conviction of a person for a certain crime. The question of whether a statement by a public official violates the principle of the presumption of innocence should be determined in the context of the particular circumstances in which the impugned statement was made (para. 48 "Dovzhenko v. Ukraine").

The court, without indicating the reasons, refused to accept these documents as inappropriate. The court considers that the facts in these documents are not included in the subject of proving the alleged crime. It should be noted that the violation of the presumption of innocence of the accused Melnik has already taken place in the same criminal process (which was also previously indicated in the reports of the ISHR).

The ECtHR has repeatedly drawn the attention of national courts to the necessary and sufficient substantiation of its decisions.

In paragraph 50 of the ECtHR judgment "Krasulya v. Russia", the court reiterates that while Article 6 of the Convention guarantees the right to a fair trial, it does not lay down

any rules on the admissibility of evidence or how it should be assessed, which is therefore a central issue for regulation by national law and national courts. However, for the proceedings to be fair, as required by para. 1 of Article 6, the "tribunal" must conduct a proper examination of the arguments and evidence presented by the parties, without prejudice to its assessment of whether they are relevant to its decision. Para. 1 of Article 6 of the Convention obliges the courts to substantiate their decisions but cannot be considered as requiring a detailed answer to every argument. The question of whether the court has failed to comply with the obligation to state the reasons arising from Article 6 of the Convention can only be decided in the light of the circumstances of the case.

The ISHR observer notes the complete absence of visible motives for issuing a determination to refuse to accept evidence.

It should be noted that the International Society for Human Rights asked the court to video broadcast the court hearings on July 22, 23, 24, 2020. The Gadyatsky District Court provided the broadcast, in connection with which the International Society for Human Rights is grateful for the openness of the court for the human rights community.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing on 07.28.20)

On July 28 and 29, in the Gadyatsky District Court of the Poltava Region, a regular court hearing was held in the case of the head of the "Vizit" TV company Alexandr Melnik, who is one of the three accused (together with A. Kryzhanovsky, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babayev and the judge of the Kremenchug court A. Lobodenko.

At these sessions, the prosecutor's petitions to extend the measure of restraint for the accused in the form of detention and the defense petition to change the measure of restraint were considered.

As in previous motions, the prosecution referred to the following circumstances:

1) The severity of the possible punishment in the form of life imprisonment, the prosecutor considers as the reason that the accused can hide from the court. However, the European Court of Human Rights recognizes that suspicion of serious crimes may initially justify detention. At the initial stage of the proceedings, the need to ensure proper investigation and to prevent escape or reoffending may justify detention. However, while the severity of the sentence is an important element in assessing the risk of escape or reoffending, the ECtHR recalls that the gravity of the charges alone cannot justify lengthy pre-trial detention (para. 102, “Panchenko v. Russia”). As regards the existence of a risk of escape, the Court reiterates that such a risk cannot be measured solely on the basis of the severity of the sentence the person faced (para. 106, “Panchenko v. Russia”).

2) Pressure on victims and witnesses. In para. 73 of the ECtHR judgment “Lyubimenko v. Russia”, the Court acknowledges that the authorities could reasonably have considered that the risk of pressure on witnesses and jurors was present in the first place. However, the Court is not convinced that this ground alone can justify the entire five-year period of the applicant’s detention. Indeed, the domestic courts referred to the risk of complicating the proceedings in a succinct manner, without indicating any aspect of the applicant’s character or conduct, in support of their conclusion that he was likely to resort to intimidation. In the Court’s opinion, such a usually formulated risk cannot justify the applicant’s detention for more than five years. The domestic courts did not take into account the fact that this ground inevitably became less and less relevant over time. Thus, the Court is not convinced that during the entire period of the applicant’s detention there were compelling grounds for fear that he would interfere with witnesses or jurors or otherwise obstruct the examination of the case, and, of course, not in order to outweigh the applicant’s right to prosecute within a reasonable time or be released pending trial.

3) The impossibility of applying a milder measure of restraint, motivated by the fact

that there is no control over the communication of the accused at the place of residence, the lack of full control during the days of court sessions, the imperfection of electronic controls.

It should be noted that during the consideration of the application of methods of ensuring criminal proceedings, the parties must submit to the court evidence of the circumstances to which they refer (part 5 of article 132 of the Criminal Procedure Code of Ukraine). At the same time, the prosecution in the petition for the extension of the measure of restraint limited itself only to formal descriptions of possible violations by the accused, without referring to specific evidence.

The defense argued the petition to change the measure of restraint by the groundlessness of the accusation and the absence of risks of non-fulfillment of procedural duties. The characterizing data of the accused, according to the lawyers, indicate the absence of such risks.

In addition, the violation of the reasonable time limits for the trial and detention in this case was stated in two decisions of the ECtHR. As a result of consideration of the complaint of the accused I. Kunik and I. Pasichny, the ECtHR pointed out violations by the national court of the permissible terms of detention.

In paras. 35,36,38 of the ECtHR judgment “Bezv and Others v. Ukraine” (on the Kunik complaint), the Court reiterates that the reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the case at hand and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what is at stake for the applicant in the dispute. Having examined all the materials presented to it, the Court did not find a single fact or argument capable of persuading it to come to a different conclusion. Having regard to its case-law on this point, the Court considers that in the present case the length of the proceedings against the applicants was excessive and did not meet the “reasonable time” requirement.

Accordingly, there has been a violation of the para. 1 of the Article 6 of the Convention.

At the same time, the court took into account that 5 years and 8 months of the trial is a violation of Article 6 of the Convention.

In paras. 25-30 of the judgment of “Bevz and Others v. Ukraine” (on the complaint of I. Kunik), the ECtHR notes that the seriousness of the charges against the applicants and the risk of their escape or interference in the relevant investigations were mentioned in the initial orders for their detention. These reasons remained the main reasons for the applicants’ detention pending their conviction or release. The Court also notes that the decisions in respect of the accused were formulated in general terms and contain repeated phrases. They do not suggest that the courts have properly assessed the facts relevant to the question of whether such a measure of restraint is necessary.

In addition, over time, continued detention requires further justification; however, the courts did not provide any further arguments. It appears that the domestic courts did not attempt to demonstrate the existence of specific facts proving the actual existence of the said risks, which, the courts argued, outweighed respect for individual freedom. In fact, the burden of proof was wrongly shifted to the applicants.

The ECtHR has frequently found a violation of para. 3 of the Article 5 of the Convention in cases against Ukraine on the ground that, even with respect to long periods of detention, the domestic courts relied on the same set of grounds (if any) in all cases of the relevant detention.

In view of the above, the Court considers that relying primarily and usually on the gravity of the charges, the authorities extended the applicants’ “pre-trial detention on grounds that could not be considered “sufficient” and “appropriate” to justify its length.

Accordingly, violations of Article 5 para. 3 of the Convention have been found.

Despite the fact that the prosecutor again did not change the request to extend the measure of restraint, nor to the already existing two decisions of the European Court of Human Rights specifically in this case, as well as the

fact of the automatic extension of the measure of restraint recorded by the International Society for Human Rights, the Gadyatsky court granted the requests prosecutor to extend the detention of all accused.

During the entire period of monitoring of trials, the International Society for Human Rights records for the first time a direct disregard by a national court of the decisions of the ECtHR rendered in relation to the same cases.

The experts of the ISHR do not have sufficient grounds to believe that there are political or other, different from the judiciary, motives for making decisions, but deliberate disregard for the decision of the ECtHR is contrary to judiciary practice.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearinging of August 11-13, 2020)

On August 11, 12, 13, in the Gadyatsky District Court of the Poltava Region, court hearings were held in the case of the head of the “Vizit” TV company Alexander Melnik, who is one of the three accused (together with A. Kryzhanovsky, I. Kunik) in the case of murder of the mayor of Kremenchuk A. Babaev and the judge of the Kremenchuk court A. Lobodenko.

At these court sessions, some material evidence was examined in the case of the murder of Judge Lobodenko.

The prosecutor presented to the court “material evidence” packed by the Poltava Court of Appeal. It should be noted that this case was not considered by the Poltava Court of Appeal, especially since the material evidence in the case was not examined. The prosecutor was unable to reasonably explain the origin of the packaging and the fact that the court of appeal sealed the evidence.

In the course of the court’s examination of material evidence, the defense demanded that the objects be measured, but the court indicated that they were not experts and could not make measurements. For the same purpose, the lawyers filed requests to summon the experts to the court, the court refused to satisfy the requests.

The defense lodged objections to the violation by the court of the right to a fair trial.

Lawyer Mironov argued his protest by the fact that the defense had previously filed a petition to involve a specialist during the examination of material evidence in the case.

The panel of judges refused to satisfy the petition without any explanations.

It should be noted that in accordance with Article 360 of the Code of Criminal Procedure of Ukraine, during the examination of evidence, the court has the right to use oral advice or written explanations of a specialist provided on the basis of his special knowledge. The specialist may be asked questions about the essence of the provided oral advice or written explanations.

Nevertheless, experts of the International Society for Human Rights are concerned about the lack of motives for the court's decision and we believe that there is a violation of the right to a fair trial.

The ECtHR has repeatedly drawn attention to the need for a sufficient reasoning of decisions of national courts.

In §§ 31; 32 "Duralisky v. Bulgaria", the ECtHR ruled that the judges themselves must respect the adversarial principle, in particular when they reject applications or decide a case on the basis of an issue raised by the court on their own initiative.

The Court notes in this regard that it is important for those who bring applications to the courts to rely on the proper functioning of the justice system: this hope is based, *inter alia*, on the confidence that a party to a dispute will be heard on all counts of the case. In other words, the parties to a dispute have a legal right to expect to be consulted as to whether a particular document or argument, as the case may be, requires their comments.

Rejection of motions by the court without stating the reasons deprives the defense of the opportunity to understand the reasons for the refusal, which ultimately constitutes a violation of the right to defense and the right to a fair trial.

Monitoring of the case of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 09.15.20)

On September 15, in the Gadyatsky District Court of the Poltava Region, a court hearing was held in the case of the head of the "Vizit" TV company Alexandr Melnik, who is one of the three accused (together with A. Kryzhanovsky, I. Kunik) in the case of the murder of the mayor of Kremenchug A. Babaev and the judge of the Kremenchug court A. Lobodenko.

Prior to the hearing, lawyer R. Lazorenko drew the observer's attention to the fact that some of the evidence that the defense considers important - 40 court rulings on the conduct of a search (regarding the weapon from which, according to the prosecutor's office, the shots were fired) are not provided to them for review and study. Lawyers have repeatedly filed motions to oblige the prosecutor's office to provide documents for review, but the court did not satisfy any of them. The lawyers also asked the court to oblige the prosecutor's office to provide them with other evidence for review - documents on the movement of the deceased judge A. Lobodenko. However, the court also rejected these requests. In the opinion of the ISHR, this may indicate a violation of the right to defense and one of the fundamental principles of legal proceedings - equality of arms.

As foreseen by the ECtHR judgments, the difficulties of the defense associated with not disclosing all materials must be balanced by the existence of legal procedures and be under judicial control ("Fitt v. The United Kingdom", para. 20), with the possibility (both legal and factual) of a court to analyze the importance and usefulness of these materials for protection purposes. In addition, the rights due to all those charged with a criminal offense should include the opportunity to familiarize themselves, in order to prepare their defense, with the results of the investigation carried out throughout the proceedings ("Tarasov v. Ukraine", para. 88).

One of the defendants, A. Kryzhanovsky, was unable to arrive in Gadyach for the court hearing due to poor health and difficult conditions of escort. The court, after consulting, decided on the possibility of his participation

in the videoconference mode. This situation cannot but cause concern. The ISHR recorded a negative trend in the health status of A. Kryzhanovsky for several years: from just feeling unwell, back pain, the need to take painkillers before the start of each hearing, to the current one - the complete impossibility of personal presence. We are obliged to note this fact, which undoubtedly has signs of a violation of the European Convention on Human Rights.

One of the forms of violation of Art. 3 of the Convention, which is often established by the observers of the ISHR during monitoring, is the lack of adequate medical assistance. Thus, in the “Kashuba v. Ukraine” case, the ECtHR stressed that the lack of medical assistance during detention may constitute an appeal that contradicts Art. 3 of the Convention. The ECtHR came to a similar conclusion in the cases “Chuprina v. Ukraine”, “Hummatov v. Azerbaijan”, “Wuhan v. Ukraine”, and “Petukhov v. Ukraine”.

Lawyer M. Vasilishin also read out the petition of A. Kryzhanovsky, who has been in jail since September 2014. According to him, during his entire stay in custody and even after the medical examination on April 2018, his client did not receive proper medical assistance. Since March 2020, he has been moving with the help of a stick or other people, has lost all upper teeth, which is why he cannot eat solid food. Due to the lack of medical support, the inflammation in the upper jaw does not go away and A. Kryzhanovsky cannot eat normal healthy food for almost a month, which in turn led to an even greater deterioration in his health. In the petition, the accused asks the court to pay attention to his problem and ensure an adequate level of medical support.

By videoconference, A. Kryzhanovsky also added that he wants to take part in court hearings in person, but cannot. And he asked the court to provide his treatment both at the hospital, according to the conclusion of the medical examination, carried out almost 2 years ago, and at the dentist.

The prosecutor, as well as the representative of the victims, asked the court to pay attention to the fact that this issue does not apply

directly to the court, but to the pre-trial detention center. Therefore, they suggested to the court that the letter with A. Kryzhanovsky’s petition be sent there. And despite the fact that the defenders urged the court to make a decision that obliges the medical institution at the pre-trial detention center, which is a separate legal entity from the pre-trial detention center, to provide the necessary legal assistance, the court decided to send another letter to the pre-trial detention center management. In this case, one can note not so much the failure to comply with the court decisions, but the possible self-removal of the panel of judges from resolving the issue with the provision of proper treatment.

According to the observer of the ISHR, the statement of the lawyer O. Mironov that such an attitude is used by the prosecutor in order to persuade the accused to take certain actions in favor of the prosecution, for example, confessing to committing the incriminated crimes that the accused did not commit [according to the lawyer], are not groundless. It should be recalled that earlier, after a long period of health problems, one of the accused, I. Pasichny, made a deal with the prosecutor. In the reports of the ISHR, it was recorded that Igor Pasichny complained about his health condition for a long time, asked the court to facilitate the provision of medical assistance to him, but never received it. After some time, when he could no longer physically come to court sessions and took part in the videoconference mode, I. Pasichny made a deal and pleaded guilty to the incriminated crimes, after which the prosecutor personally petitioned to change his measure of restraint to house arrest. International Society for Human Rights cannot assess the court’s decision, but since it was made on the basis of a deal, it can be assumed that the defendant’s poor health was one of the reasons for such a deal. According to the definition of article 1 of the UN Convention against Torture, “the definition of ‘torture’ means any act by which a person is intentionally inflicted with severe pain or suffering, physical or mental, in order to obtain information or confessions from him or from a third party...”.

When examining material evidence, namely wad and wad containers, the defense drew the court's attention to a number of inconsistencies of evidence with official documents and legislation, for example, the names of the at-testing witnesses, the purity of the wads allegedly removed from the bodies, etc. Which casts doubt on the ownership and admissibility of this evidence.

Since A. Kryzhanovsky was unable to evaluate and study the material evidence via video-conference, the prosecutor suggested stopping the proceedings to provide treatment for A. Kryzhanovsky, or still find out his state of health and why he was not taken to the hearing. The court, having consulted, decided to attach all the evidence, giving A. Kryzhanovsky the right to examine the evidence separately upon request.

Due to the fact that A. Kryzhanovsky became ill and needed to call an ambulance to the pre-trial detention center, a break was announced until September 16, 2020.

Monitoring of criminal proceedings of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 09/30/2020)

On September 30, 2020, a hearing was held in the Gadyatsky District Court of the Poltava Region in the case of A. Melnik, A. Kryzhanovsky, I. Kunik in the case of the murder of the mayor of Kremenchug A. Babaev and the judge of the Kremenchug court A. Lobodenko.

At the hearing, the examination of material evidence continued.

The prosecutor presented the mobile operator's starter packs as evidence. Such material evidence was seized during a search in the place of residence of Alexandr Kryzhanovsky. The accused himself notes that the court was not provided with video filming of the investigative action, although it was made. In addition, he notes that he really used two starter packs and their numbers, but did not use the others. The accused believes that the attachment of evidence is illegal, since the search did not comply with the requirements of the law. The lawyer supported the position of the accused and once again drew attention to the fact that video

filming was carried out during the search, but it was not provided to the court. The lawyer announced the suspicion that some of the evidence could have been deliberately planted on the accused during the search. Proceeding from the above, the lawyer stated that he was against admitting such evidence to the case materials, since they were obtained in violation of the law.

The defense filed a motion on the inadmissibility of the evidence obtained as a result of the search, citing the following grounds: • the search was carried out by an unauthorized person; • during the investigation, a lawyer was absent, which means that the accused was not provided with legal assistance; • the package with evidence was opened and not sealed, no documents on the previous autopsy were provided by the prosecution; • the prosecutor did not provide evidence of obtaining material evidence from a legal source; • the court was not provided with video footage of the investigative action.

In the Resolution of the Cassation Criminal Court of the Supreme Court dated August 5, 2020, in case No. 334/5670/18, the issue of the inadmissibility of evidence obtained as a result of the search, which was filmed, was clarified, but the video was not provided to the court.

So, the requirements provided for in Part 10 of Art. 236 of the Criminal Procedure Code, Part 2 of Art. 104 of the Criminal Procedure Code, Parts 1 and 6 of Art. 107 of the Code of Criminal Procedure, aimed at improving the procedure for conducting a search of housing or other premises by the pre-trial investigation authorities, in particular, when inaccurate information about the evidence obtained during their conduct is added to the protocols of investigative actions. Given the content of Part 6 of Art. 107 of the Code of Criminal Procedure, negative consequences in the form of recognition of a procedural action and the results obtained as a result of its commission invalid can occur only in the case of non-use of technical means of fixation.

However, even in this case, this is not an unconditional basis for recognizing the evidence obtained during the search as inadmissible,

since Part 6 of Art. 107 of the Code of Criminal Procedure provides for exceptions to this rule when the grounds for recognizing factual data as inadmissible as evidence can be “overcome” by consensus of the parties to criminal proceedings (the so-called conditionally consensual grounds for recognizing factual data as admissible as evidence).

A situation in which video recording of the search was not carried out should not be equated with a situation in which the prosecution did not submit the video to the court as a mandatory annex to the protocol.

At the same time, failure to provide a video recording of the inspection of the scene, which is an integral annex to the protocol, by the prosecution in the course of the trial is a violation of the requirements of Part 2 of Art. 104 of the Criminal Procedure Code.

Assessing the materiality of such a violation, the Court, taking into account the provisions of Art. 87 of the Code of Criminal Procedure does not consider that there are unconditional grounds for recognizing the results of the inspection of the scene and the derivative investigative (search) actions inadmissible as evidence.

On the existence of other (conditional) grounds for recognizing evidence as inadmissible, the courts need in each specific criminal proceeding to find out what consequences of violation of the requirements of the criminal procedural law have led and whether these consequences are irreversible (that is, those that cannot be eliminated in the course of judicial consideration). When it comes to recognizing evidence obtained in the course of investigative (search) actions as inadmissible, this mainly concerns the existence of doubts about the reliability of the information obtained as a result of their conduct.

In the Decree of the Cassation Criminal Court of the Supreme Court of November 19, 2019, in case No. 750/5745/15-k, a legal position is provided: if the admissibility of evidence is questioned, the obligation to prove the admissibility of evidence is imposed on the party that submits it.

When doubts arise about the credibility of

the source of evidence, it becomes necessary to corroborate the circumstances with evidence from another source (“Jalloha v. Germany”, para. 96). In such situations, a question arises that must be answered: is the judicial review, including the methods of obtaining evidence, fair (“Bykov v. Russia”, para. 89).

In addition, the defense filed a petition to attract a specialist to examine the phone and sim cards (subscriber identification modules).

Also, the defense drew attention to the fact that as evidence the prosecutor attached a document, as indicated by the lawyer, – “a piece of paper”, which confirms the purchase of the phone on 12.31.2012. However, if you open the technical documentation, namely, pay attention to the warranty card, there is a different date of purchase of the phone.

The defense’s petition to involve a specialist was granted.

Further, after a technical break in the court session, the prosecutor filed a motion to investigate material evidence - a burnt car at the place of its storage, since it is impossible to deliver it to the court session. The prosecutor asked to involve a specialist for video recording by technical means of examining material evidence. In turn, the defense filed a petition to involve a specialist - automotive technician.

Prosecutor Moskalenko D.V. and the representative of the victims, lawyer A.P. Kononenko objected to the satisfaction of the petition for the involvement of a specialist - automotive technician, since at present the expert’s opinion on this material evidence has not been examined, the witness has not been questioned.

As a result of the trial, the prosecution’s petition was satisfied and the defense’s petition was denied.

Monitoring of the cases of A. Melnik, A. Kryzhanovsky, I. Kunik (hearing 11.19.2020)

On November 19, 2020, a hearing was held in the Gadyach District Court of the Poltava Region in the case of A. Melnik, the head of the “Visit” TV company, who is one of three defendants (together with A. Kryzhanovsky, I.

Kunik) in the case of the murder of the mayor of Kremenchug A. Babaev and the judge of the Kremenchug court A. Lobodenko.

Earlier, the International Society for Human Rights appealed to the Gadyach District Court of the Poltava Region with a request to conduct a video broadcast of the court hearings on November 18, 19 and 20. However, on November 23, 2020, the ISHR observer received a reply stating that video broadcasting is allowed on the basis of a court decision, which is adopted by a panel of judges, taking into account the position of the parties and the possibility of such actions being carried out without prejudice to court proceedings. Since Judge E. Zakolodyazhnaya was on sick leave, the application of the ISHR could not be considered, since clause 20-5 of Section XI of the “Transitional Provisions” of the Criminal Procedure Code of Ukraine does not provide for the possibility of solving this issue by the presiding judge.

At the court session on November 19, 2020, the prosecutor’s petition to extend the period of detention was considered.

The issue was decided by the presiding judge, since in accordance with paragraph 5 of clause 20-5 of section XI “Transitional Provisions” of the Criminal Procedure Code of Ukraine temporarily, for the period of quarantine established by the Cabinet of Ministers of Ukraine (Resolution of the Cabinet of Ministers of Ukraine No. 641 dated July 22, 2020 as amended in accordance with Resolution No. 956 dated October 13, 2020) in order to prevent the spread of coronavirus disease (COVID-19) in Ukraine, if it is impossible for the panel of judges to consider an application for the extension of a measure of restraint in the form of detention within the time period specified by this Code, it may be considered by the presiding judge.

As in previous requests for extensions of detention, the prosecution referred to:

The severity of the possible punishment in the form of life imprisonment.

However, the ECtHR has repeatedly noted that the severity of the charge cannot in itself justify long periods of detention (“Ečius v.

Lithuania”, para. 94).

According to paragraph 3 of Article 5 of the Convention, after a certain period of time, the mere existence of reasonable suspicion does not justify the deprivation of liberty, and the courts must give other grounds for extending the detention (“Borisenko v. Ukraine”, para. 50). Moreover, these grounds must be clearly indicated by the national courts (“Yeloyev v. Ukraine”, para. 60; “Kharchenko v. Ukraine”, para. 80).

The existence of a reasonable suspicion that a detainee has committed a crime is a prerequisite and sine qua non for the legality of his continued detention, but after the expiration of the time, such suspicion will not be enough to justify a prolonged detention. The Court has never tried to translate this concept into a clearly defined number of days, weeks, months or years, or at different times depending on the severity of the crime. Once “smart suspicion” is no longer sufficient, the court must establish other, court-based grounds that will continue to justify the deprivation of liberty (“Maggie and Others v. The United Kingdom”, paras. 88-89).

The ECtHR also recalls that the grounds for suspicion remain unchanged. If the arrested person has committed an offense, this is a sine qua non condition for his continued detention to be considered lawful, but after a while this condition is no longer sufficient. The Court must then establish other reasons on which the decisions of the judicial authorities are based, which continue to justify the deprivation of liberty. If these grounds are found to be “appropriate” and “sufficient”, then the Court shall examine whether the competent national authorities have shown “special good faith” in the conduct of the proceedings (“Labita v. Italy”, para. 153).

Risk of pressure on victims and witnesses.

In paragraph 73 of the ECtHR judgment “Lyubimenko v. Russia”, the European Court acknowledges that the authorities could reasonably believe that the risk of pressure on witnesses and jurors was present in the first place. However, the Court is not convinced that this ground alone can justify the entire

five-year period of the applicant's detention. Indeed, the domestic courts referred to the risk of complicating the proceedings in a succinct manner, without indicating any aspect of the applicant's character or conduct, in support of their conclusion that he was likely to resort to intimidation. In the Court's opinion, such a usually formulated risk cannot justify the applicant's detention for more than five years. The domestic courts did not take into account the fact that this ground inevitably became less and less relevant over time. The motivation of the courts was not developed to reflect the evolving situation and to check whether the sufficiency at the advanced stage of the proceedings retained this basis. Thus, the Court is not convinced that, throughout the entire period of the applicant's detention, there were compelling grounds for fear that he would interfere with witnesses or jurors or otherwise obstruct the examination of the case, and, of course, not in order to outweigh the applicant's right to prosecute within a reasonable period of time or to be released pending trial.

As a result of consideration, the petition of the prosecution was granted. The court argued its position by: - the fact that there is a real need to interrogate a large number of witnesses, therefore there is an objective risk of pressure on witnesses, and A. Melnik may take actions that will hinder the trial. - referring to the motive and method of the criminal offense, which has a high level of public danger.

The International Society for Human Rights in each report on the results of the monitoring of court hearings, at which the issue of extending a measure of restraint was raised, expresses its concern over the situation and believes that the extension of the terms of detention of A. Melnik, A. Kryzhanovsky, I. Kunik may be automatic. Following the positions of the ECtHR, cited above, such actions of the State may violate the rights of the accused under Article 5 of the European Convention.

According to the lawyer, at the hearing, the presiding judge considered the prosecutor's petition, but refused to consider the defense's petition to change the measure of restraint.

The International Society for Human Rights expresses its concern about the violation of the principle of equality in the case of A. Melnik, A. Kryzhanovsky, I. Kunik. We believe that the principle of equality should be implemented regardless of unforeseen force majeure conditions, such as, for example, quarantine. Indeed, the principle of equality of arms is only one feature of the broader concept of fair trial, which also includes the fundamental right to adversarial criminal proceedings ("Barbera, Messege and Jabardo v. Spain", paras. 33-34).

Monitoring of the cases of A. Melnik, A. Krizhanovsky, I. Kunik (from December 14, 2020)

For more than six years, the case of the murder in 2014 of the mayor of Kremenchug A. Babayev and judge A. Lobodenko is considered. The director of the television company "Visit" Alexander Melnik, human rights activist Alexander Kryzhanovsky and resident of Globino Igor Kunik, are accused.

As it became known to the ISHR, the case had not been heard for more than two months because the judges of the Gadyatsky District Court are on sick leave. In this regard, the hearings on October 13 and from October 22 to December 14, 2020 were canceled.

Nevertheless, on November 18, 2020, the presiding judge single-handedly considered the issue of a measure of restraint (detention was extended until January 17, 2021) in accordance with paragraphs 20-5 of section XI of the "Transitional Provisions" of the Criminal Procedure Code of Ukraine, but already in the previous report of the ISHR, the observers noted their concern about the violation of the principle of equality in this case, because the prosecutor's request to extend the measure of restraint in the form of detention was considered by the presiding judge, and the defense lawyer's application to change the measure of restraint was refused, citing the fact that this issue should be considered only with the participation of the full board.

According to the ECtHR practice, equality of arms is an integral part of a fair trial. This principle requires that each party be afforded

a reasonable opportunity to present its case under conditions that do not place it at a material disadvantage vis-à-vis the opposing party (“Fouchet v. France”, paragraph 34; “Bobek v. Poland”, paragraph 56; “Klimentiev v. Russia”, paragraph 95). Equality of the parties requires the establishment of a fair balance between the parties.

It should also be noted that until this time the Court of Appeal has not yet considered the lawyer’s complaints against the decisions of the Gadyatsky District Court of the Poltava Region dated July 29, 2020, September 23, 2020 and November 19, 2020 on the extension of the measure of restraint in the form of detention. The Sumy Court of Appeal scheduled the consideration of the complaint by a decision of July 29, 2020, to February 2021, when this decision will be invalid for several months. In this regard, the lawyer R.V. Lazorenko appealed to the Council of Judges of Ukraine, but has not yet received an answer. In his words: “justice does not function”.

On December 9, 2020, accused A. Melnik filed an application for the immediate consideration of the petition of his defense lawyer to change the measure of restraint dated 11/18/2020. He also points out that the court’s decision to extend the right to defense, and also shows the judge’s commitment to the prosecution.

A. Melnik’s defense lawyer has repeatedly pointed out that the court, when deciding to extend the measure of restraint in the form of detention, does not analyze the arguments of the parties. The prosecutor, referring to the risks provided for by Article 176 of the Criminal Procedure Code of Ukraine, does not take into account the fact that A. Melnik was not previously convicted, was not brought to justice, did not evade the investigation and was interrogated as a witness during the pre-trial investigation. Also, the court does not take into account the fact that at the moment all the witnesses have already been questioned and none of them complained about pressure by the accused.

It is also worth noting that the crimes were committed on 02/11/2014 and 07/26/2014,

and A. Melnik was arrested on September 4, 2014, that is, from the moment of the commission of the crime until the moment of detention, the fact of obstruction of the investigation was not recorded (this is confirmed by a number of other documents, for example, replies to inquiries from the Kremenchuk department of the National Police). All of the above, as a minimum, should be taken into account by the court when assessing the evidence of the risks of non-fulfillment by the accused (including A. Melnik) of their procedural duties when considering the petitions of the prosecutor’s office to extend the exceptional measure of restraint.

R. Lazorenko also insists that the European Court of Human Rights has already twice established the illegality of keeping the accused in custody and delaying the case, namely in the decisions of the ECtHR in the case “Levchenko and Others v. Ukraine” of 04.11.2019, which was combined with the case of “Pasichny v. Ukraine”, as well as in the judgment in the case “Bevz and Others v. Ukraine” dated 06.25.2020, which was merged with the case “Kunik v. Ukraine”. Also, the accused I. Kunik appealed to the Ombudsman about the fact that the decisions of the ECtHR are not being implemented and they continue to keep him in custody, but he receives the same response - “The decision of the ECtHR will be taken into account”.

On December 14, 2020, defender R. Lazorenko filed a petition to replace the judge due to the fact that the judges were deprived of the opportunity to take part in the hearings and the case had not been considered for more than two months. According to Article 28 of the Code of Criminal Procedure of Ukraine, criminal proceedings against a person who is in custody must be carried out without delay and must be considered first. It is this rule that should provide a reasonable time frame, but in practice the defendants are waiting for a decision on their case for six years.

In this case, it is worth noting that the defense is already running the risk that the case may be started anew, because the legislation indicates that the judicial review of the case should be carried out by one panel of judges

and in case of replacement at the request of one of the parties to the criminal proceedings or victims, or however, in connection with the need to study the case materials by a new judge, the court may decide to consider the case from the beginning (Article 319 of the CCP of Ukraine). This may also reflect the extremely low level of confidence of the defense in the existing collegium of the court, which is considering the case.

We clarify that on December 18, to the lawyer's application for replacing the judge, the head of the Gadyatsky District Court of the Poltava Region (one of the judges of the collegium) replied that the presence of a judge on sick leave (temporary disability) is not a basis for replacing a member of the collegium. But the case will not be considered for at least another month.

The International Society for Human Rights also notes that the issue of providing adequate medical assistance to the accused has not yet been resolved. Let us remind you that earlier, probably due to prolonged detention (in disregard of the ECtHR decision), serious health problems and lack of medical support, the fourth accused in this case, I. Pasichny, was forced to make a deal with the prosecutor's office and admit his guilt. According to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment "any actions by which a person is intentionally inflicted with severe pain or suffering, physical or mental, in order to obtain information or confessions from him or from a third party, to punish him for an action that he or a third party has committed or of which he is suspected, and to intimidate or coerce him or a third party, or for any reason based on discrimination of any nature, when such pain or suffering is caused by a government official or other person in an official capacity, or at their instigation, or with their knowledge or tacit consent ..." is defined as torture. Article 3 of the European Convention on Human Rights prohibits torture and "inhuman or degrading treatment or punishment". Article 3 of the Convention imposes on the State the obligation to ensure that every prisoner is held in

conditions compatible with respect for human dignity, so that the conditions of the execution of the measure do not subject the person concerned to repression or endurance tests that exceed the inevitable level of suffering inherent in detention in places of deprivation of liberty and that, taking into account the practical requirements of a sentence of imprisonment, the health and well-being of the prisoner is adequately ensured, in particular by providing the required medical care ("Kudla v. Poland", paragraph 94).

3.34 The trial of Maksim Mikitas

Monitoring of the Maksim Mikitas case (hearing on 07.08.2020)

On July 8, 2020, the Supreme Anti-Corruption Court considered the case in criminal proceedings number 4201700000004969 on the suspicion of ex-deputy and former president of the "Ukrbud" company Maxim Viktorovich Mikitas of committing crimes under part 3 of Art. 27; part 5 of art. 191; part 4 of Art. 369; part 3 of Art. 209; part 3 of Art. 28; part 3 of Art.358; part 3 of Art. 368; part 4 of Art. 358 of the Criminal Code of Ukraine.

Course of the hearing: On 06.30.2020, the Supreme Anti-Corruption Court received a petition from the lawyer R.Y. Kirichenko, demanding to change the measure of restraint applied to the suspect M.V. Mikitas in the form of detention on remand in the house arrest with a ban on leaving the house.

In support of the requirements to change the applied restraint, the defense attorney refers to the existence of circumstances that: - testify to the groundlessness of the reported suspicion of committing the criminal offenses incriminated to him; - they deny the existence of the risks provided for in paragraphs 1-5 p. 1 of Art. 177 of the Criminal Procedure Code of Ukraine, namely: the risk of hiding from preliminary investigation and / or the court; the risk of illegal influence on witnesses, other suspects, experts in criminal proceedings; risk of committing another criminal offense; the risk to

destroy, hide or distort any of documents that are essential for establishing the circumstances of a criminal offense; risk of obstructing criminal proceedings in a different way.

According to the defense, the number of border crossings by the suspect, which, among other things, justify the existence of this risk, without appropriate documentary evidence, cannot serve as evidence that the latter has the ability to freely cross the border and leave the territory of Ukraine. The lawyer believes that, given the completion of the pre-trial investigation, the use of a measure of restraint in the form of detention is unjustified.

The defense attorney also refers to the existence of other circumstances that were not taken into account when applying a measure of restraint in the form of detention, namely: the immoderation of a certain amount of bail and the fact that the court did not take into account actual information about the material condition during its determination, as well as information characterizing the personality of the suspect and his social and marital status.

In accordance with the jurisprudence of the European Court of Human Rights, the risk of concealment cannot be measured solely on the basis of the severity of a possible sentence, at least at further stages of the proceedings. It must be assessed taking into account several relevant factors, in particular, personal data, moral qualities, property, relations with the respondent State in which the person is being prosecuted, as well as his international contacts (“*Miminoshvili v. Russian Federation*”).

The suspect supported the petition, asked to satisfy it and take into account the circumstances cited by the defense lawyer in the petition, in particular about the need to care for the mother who needs care and treatment, in support of which the relevant certificates and documents were provided.

Prosecutor Skibenko A.I. objected to the petition, referring to its unfoundedness and groundlessness. For example, the defense attorney’s assertion that the suspect did not violate procedural obligations is refuted by the conclusion of the Appellate Chamber of the Supreme Anti-Corruption Court, which, by its

ruling, turned 30 million hryvnias into state revenue, contributed as collateral precisely because of the latter’s violation of procedural obligations.

The prosecution also pointed out that all the arguments to which the defense attorney refers in his petition, in fact, boil down to disagreement with the decision of the Appellate Chamber of the Supreme Anti-Corruption Court. However, in accordance with the provisions of the Code of Criminal Procedure of Ukraine, when proving the need to change the applied restraint, the defender must cite new circumstances that were not investigated when applying the measure of restraint and affect the court’s conclusion about the applied measure of restraint. After consulting, the court decided to refuse to satisfy the lawyer’s petition.

In its decision, the court refers to the analysis of the case law of the European Court of Human Rights, which highlights the following criteria of the proof standard of “reasonable suspicion”: - the existence of facts and information that made it possible to convince an objective observer that the person concerned may have committed a criminal offense; - the facts that justify the suspicion can be “reasonably” considered to fall under the signs of an offense under the criminal liability law; - the reasonableness of a suspicion cannot be established in abstracto or based on subjective assumptions, but must be supported by specific evidence in criminal proceedings; - the reasonable suspicion standard of proof does not require the competent authorities to operate with evidence sufficient to bring charges or convictions. And, the interpretation of the term “reasonable” depends on all the circumstances of the case (“*Fox, Campbell and Hartley v. The United Kingdom*”).

3.35 The trial of Konstantin Mirchenko

Monitoring of the case of K. Mirchenko (hearing of 12.17.2020)

On December 17, 2020, a hearing was held in the Poltava Court of Appeal in the case of Konstantin Mirchenko, who was sentenced on September 20, 2019 under Part 1 of Art. 115 of the Criminal Code of Ukraine - premeditated murder.

According to the text of the decision of the court of first instance, on December 2, 2017, at the place of residence in the apartment of K. Mirchenko, after sharing alcoholic beverages with his partner, on the basis of a quarrel, in a state of alcoholic intoxication, Konstantin Mirchenko deliberately inflicted numerous blows on the latter, in particular, with parts of a wooden stool to the head and other parts of the body, causing grievous bodily harm that resulted in the death of the victim at the scene.

On September 20, 2019, the Oktyabrsky District Court of Poltava found K. Mirchenko guilty of committing a crime under Part 1 of Art. 115 of the Criminal Code of Ukraine and sentenced him to imprisonment for a term of eleven years.

The measure of restraint for the accused K. Mirchenko until the entry into force of the sentence was left in the form of detention.

According to the Human Rights Convention, everyone who has been convicted of a criminal offense has the right to have the sentence or penalty imposed on him reviewed by a higher court. And on October 31, 2019, the Poltava Court of Appeal received an appeal from the lawyer Marina Shinkarenko, in the interests of the accused, against the verdict of the Oktyabrsky District Court of Poltava on September 20, 2019.

At the beginning of the hearing, it became known that in connection with the reform, the Poltava Regional Prosecutor's Office was reorganized, and the prosecutor was replaced in this case, since the previous prosecutor, O. Pleskach, is currently not working. The newly appointed prosecutor Y. Prishchepa filed a

motion to adjourn the case to prepare the necessary documents. This procedure is provided for by Art. 37 of the Criminal Procedure Code of Ukraine (appointment and replacement of a prosecutor). It is worth noting that the reform began in September 2020 and the replacement of the prosecutor took place at approximately the same time, but so far, the head of the prosecutor's office has not issued a decree that authorizes Y. Prishchepa to participate in criminal proceedings.

Due to the fact that the prosecutor is not yet authorized to participate in these criminal proceedings, the consideration of the appeal was postponed to another date. Thus, due to the fault of the prosecution, the consideration of the case is being delayed. Although it should be noted that the appointment of a session by the court of appeal one and a half months after the receipt of the appeal for the Ukrainian criminal proceedings is quite prompt. The International Society for Human Rights will continue to monitor this case.

3.36 The trial of Vasily Mokrinsky and others

Monitoring of criminal proceedings of Mokrinsky Vasily and Frankovsky Roman (hearing 10/13/2020)

On October 13, 2020, in the Khmelnytsky City District Court of the Khmelnytsky Region, a hearing was held in case No. 686/13590/16-k on the charges of V.I. Mokrinsky and R.S. Frankovskiy under Part 2 of Art. 365, part 2 of Art. 121 of the Criminal Code of Ukraine. Employees of the Zamkov Prison Mokrinsky V.I. and Frankovskiy R.S. accused of having arrived at the Khmelnytsky pre-trial detention center for the convicted Danilyuk A., exceeding their authority, used physical violence against the convict, namely inflicted at least 19 blows on the head with a blunt object, as a result of which Danilyuk A. died.

The prosecutor, the victim and her representative, the accused and their defenders arrived at the hearing.

However, the prosecution witness, whom it

was planned to question, did not appear. In connection with the absence of the witness, the court, having heard the opinion of the parties, decided to postpone the consideration of the case.

National courts often face the problem of failure to ensure the attendance of witnesses by the prosecutor's office.

For example, in the "Kazyulin v. Russian Federation" case, the ECtHR found a violation of Art. 6 of the Convention in the aspect of the reasonableness of the time frame for the consideration of the case, since the witnesses have repeatedly failed to appear at the court hearings (paragraph 36). The state made no secret of the fact that the examination of the case within a reasonable time was complicated by the difficulties in calling witnesses (paragraph 31).

The question of the existence of a valid reason for the non-appearance of a witness must be considered before it is determined whether such evidence is unique or conclusive. If the witness did not appear in person to testify, it is imperative to establish the justification for his absence ("Al-Kawaya and Taheri v. The United Kingdom", paragraph 120; "Gabrielyan v. Armenia", paragraphs 78, 81-84).

Paragraph 1 of Art. 6, in conjunction with paragraph 3, requires the Contracting States to take measures to allow the accused to question witnesses who testify against him or to have them questioned ("Trofimov v. Russia", paragraph 33; "Sadak v. Turkey", paragraph 67).

In the event that the questioning of witnesses is impossible due to their absence, the authorities must take reasonable measures to ensure their presence ("Karpenko v. Russia", paragraph 62; "Damir Sibgatullin v. Russia", paragraph 51; "Pello v. Estonia", paragraph 35; "Bonev v. Bulgaria", paragraph 43).

However, *impossibile nulla est obligatio* (the impossible cannot be made a duty); provided that the authorities cannot be accused of negligence in attempting to provide the accused with the opportunity to question relevant witnesses, the absence of witnesses does not, as such, necessitate the termination of

the prosecution ("Gossa v. Poland", paragraph 55).

Also, the defense side filed a petition for the court to appeal to the expert institution with a petition to expedite the examination in criminal proceedings, and the court granted this petition.

3.37 The trial of Vasily Muravitsky

Monitoring the case of V. Muravitsky (court hearing 01.27.2020)

On January 27, 2020, in the Korolevskiy District Court of Zhytomyr, a regular court session was held on the case of the journalist Vasily Muravitsky, who is accused of treason and encroachment on the territorial integrity of Ukraine (part 2 of article 110, part 1 of article 111, part 2 of article 161, part 1 of article 258-3 of the Criminal Code of Ukraine) through his journalistic activities. Experts from the International Society for Human Rights continue to monitor this lawsuit. The course of the hearing.

At the beginning of the court session, the issue of the absence of lawyer S. Novitskaya was raised. She did not appear at the hearing without warning the court. The accused said that now lawyer A. Gozhi will represent his interests in court, and the contract with S. Novitskaya will be terminated. The court again drew V. Muravitsky's attention to the fact that the refusal of the defense counsel was carried out in his presence and therefore S. Novitskaya should arrive at the next hearing or confirm the information about the termination of the contract in writing and submit it to the court. The prosecutor asked the court to avoid further claims by the defense and not to delay the trial due to the failure of one of the lawyers to appear, in the event of repeated failure to appear without a good reason, bring S. Novitskaya to justice.

Despite the fact that the accused was not deprived of defense and the prosecutor had no objection to the continuation of the trial (since the right to defense was not violated),

the court decided to transfer it to the next agreed date and consider only the petitions filed.

Due to the fact that the term of the selected measure of restraint is ending, the prosecutor filed a petition for the selection of the measure of restraint to V. Muravitsky in the form of detention with the possibility of making a bail. The prosecutor argued his request, as in previous times, by the gravity of the alleged crimes, the risk of hiding from the court, and ties to Russian politicians. He also indicated that accused's social connections are not sustainable and exist only with his family.

Attorney A. Gozhiy objected to the satisfaction of this application arguing his objection by the lack of evidence of risks indicated by the prosecutor. Emphasizing that for the entire time the defendant was under house arrest, no violations were recorded on his part. He confirmed his argument with answers to inquiries to law enforcement agencies, which indicated that there were no recorded violations of house arrest by the accused. The lawyer also filed a motion in which he asked to change the measure of restraint of the accused to a personal obligation. V. Muravitsky filed a petition in which he requested not to apply any measure of restraint.

After the meeting, the court, taking into account all the circumstances, came to the conclusion that at this stage of the judicial review, in order to avoid attempts to evade the court, a measure of restraint in the form of house arrest at night would be sufficient. During the stay of the accused under house arrest, no violations by the accused were recorded, and the risks indicated by the prosecutor were not documented, therefore the court sees no reason to satisfy the prosecutor's request. This position of the court is fully consistent with the case law of the European Court of Human Rights, which insists that only a reference to the relevant rule of law without specifying grounds justifying the allegation that the person may be absconding, interfere with the proceedings or commit new crimes is not sufficient to decide on the applicant's detention ("Boychenko v. Moldova").

The court extended the previously selected measure of restraint in the form of a night house arrest to V. Muravitsky until March 28, 2020.

Monitoring the case of Vasily Muravitsky (court hearing 02/18/2020)

On February 18, 2020, in the Korolevskyl District Court of Zhytomyr, a regular court session was held on the case of the journalist Vasily Muravitsky, who is accused of treason and encroachment on the territorial integrity of Ukraine (part 2 of article 110, part 1 of article 111, part 2 of article 161, part 1, article 258-3 of the Criminal Code of Ukraine) through his journalistic activities. Experts from the International Society for Human Rights continue to monitor this trial.

The course of the hearing. At the beginning of the court session, the court drew attention to the fact that despite the notification by all available means, the lawyer Svetlana Novitskaya did not appear at the hearing, the reasons for the failure to appear to the court were unknown.

Attorney A. Gozhiy stated that he also wrote a letter to attorney S. Novitskaya with a draft signed agreement on breaking the agreement with Vasily Muravitsky. The letter was handed to her on February 05, 2020. The letter indicated that due to a systematic failure to appear in court, V. Muravitsky wants to break the contract and asks to sign the agreement or to come to court. But, lawyer Novitskaya did not contact.

When asked by the court whether S. Novitskaya would continue to defend him or whether he would raise the question of breaking the contract, the journalist confirmed that he would raise the question of breaking the contract and his defender would be A. Gozhiy. V. Muravitsky also informed the court that S. Novitskaya did not contact him and that he did not receive a response from her.

The court asked the accused and the prosecutor whether it is possible to continue the trial, despite the failure of one of the lawyers to appear. The defendant and the prosecutor replied that it is up to the court.

The prosecutor also noted that the lawyer S. Novitskaya does not fulfill the obligations laid down on her by the Code of Criminal Procedure, which is a violation and the basis for bringing her to disciplinary liability. According to the prosecutor, the court must oblige her to appear, impose the appropriate penalties on her in case of failure to comply with these requirements. Also, to find out the opinion of the defense, whether their right to defense would be violated in the absence of Novitskaya and, if that, in their opinion, was not violated, to continue the trial.

The court, after hearing the parties and consulting on the spot, made a decision in connection with the failure of Novitskaya, who did not re-provide the reasons for the failure to appear, and did not provide any information regarding the continuation of the contract or its termination, the trial will be postponed. A letter will be sent to the Kiev Disciplinary Commission of Attorneys stating that the defender Novitskaya is not fulfilling the duties assigned to her, according to the contract.

According to information received from lawyer Gozhiy, the defense wanted to file 5 motions, but the court decided to postpone their consideration until the circumstances of the failure to appear of the second defense lawyer were clarified.

Officially, due to the absence of a lawyer S. Novitskaya, 4 court hearings were adjourned. The ISHR expresses its concern about such a formal postponement of the consideration of the case, since taking into account the presence of the second lawyer, A.Gozhiy, at the hearing, the defendant's right to defense is not violated. In addition, the consideration of the case is postponed solely for the purpose of officially recognizing the termination of the contract between the journalist and one of his lawyers, which in itself cannot interfere with the examination of the case.

However, the provision of Article 6 § 1 of the ECtHR establishes that everyone has the right to a fair and public hearing within a reasonable time. In this case, the court admits that journalist V. Muravitsky for a long period of time be under the weight of the charge, which the

European Court has recognized as a violation of Article 6 of the Convention ("Vemkhov v. Germany", "Brogan and others v. The United Kingdom").

Monitoring the case of V. Muravitsky (court hearing 03.20.2020)

March 20, 2020 in the Korolevsky District Court of the city of Zhytomyr, a regular court session was held in the case of the journalist Vasily Muravitsky, who is accused of treason and encroachment on the territorial integrity of Ukraine (part 2 of article 110, part 1 of article 111, part 2 of article .161, part 1, article 258-3 of the Criminal Code of Ukraine) through his journalistic activities. Experts from the International Society for Human Rights continue to monitor this lawsuit.

The previous hearing, which was to be held on 03/04/2020, did not take place due to the failure to appear of the prosecutor Levchenko. The presiding judge read out a letter from the prosecutor's office explaining the reasons for the prosecutor's failure to appear and, without asking the opinion of the parties, postponed the hearing.

The course of the session. The presiding judge N. Yanchuk opened the session and raised the question of the appearance of the parties. The court clerk reported that all parties to the trial had appeared, except for one of the defenders - Svetlana Novitskaya, who was duly notified of the date and place of the hearing.

The court heard the views of the parties on the possibility of starting a case on the merits without the participation of lawyer S. Novitskaya. Vasily Muravitsky did not mind, saying that he sent her a letter of refusal of her services, and even contacted the press with a request not to block the consideration of his case. Lawyer A. Gozhiy said that he did not understand the behavior of S. Novitskaya and was ready to hear the case. The court, having conferred on the spot, since no notifications or petitions were received from Novitskaya about her participation (or non-participation) in the case, and in the absence of information on the measures taken by the disciplinary commission

of the Kiev Council of Lawyers, determined: 1. To adjourn the hearing to 04/21/2020 - 10:30 am. 2. Re-inform the lawyer S. Novitskaya.

Further, the prosecutor V. Levchenko once again filed a motion to change the measure of restraint for a journalist from nightly house arrest to 60-day detention with the possibility of bail of 300 non-taxable minimum incomes of citizens. The prosecutor substantiated the need for arrest by Muravitsky's opportunity to hide in Russia, to continue "criminal activity in the form of writing articles", ties with "Ukrainian pro-Russian politicians", as well as the fact that the defense (represented by counsel S. Novitskaya) disrupts the hearing, which leads to delaying the proceedings.

Lawyer A. Gozhiy and the accused himself objected to the satisfaction of such a petition, provided a letter from the police of the Zhytomyr Region which stated that V. Muravitsky had never violated the conditions of house arrest, and he was not obliged to answer for S. Novitskaya's behavior, present on all courts and does not mind continuing the proceedings. The defense also indicated that the risks stated by the prosecutor are unproven, especially since the whole country is on quarantine and the border is closed, and with regard to "relations with pro-Russian politicians," he asked the prosecutor to clarify who he had in mind.

After that, the defense filed a request to change the measure of restraint from house arrest to a personal obligation with a request to return V. Muravitsky's passport of a citizen of Ukraine and an identification code. The petition, among other things, was justified by international resonance and the recognition of the journalist as a political prisoner, the lack of clear accusatory language in understanding the practice of the ECtHR, the absence of the risks stipulated by the Criminal Procedure Code, humanitarian needs (the right to work, the right to medical care), and general judicial practice (cases of Vasilts-Timonin, Volkov, Kotsaba, Vyshinsky).

The court, having conferred in the deliberation room, determined: 1. Refuse the prosecutor in the application for detention. 2. Extend the night house arrest until 05/18/2020. 3. Re-

turn to Vasily Muravitsky passport of a citizen of Ukraine and identification code.

3.38 The case of Naftogaz of Ukraine

Monitoring of the case regarding damage to NJSC "Naftogaz of Ukraine" (hearing on 08.11.2020).

On August 11, the Supreme Anti-Corruption Court held a preparatory hearing in the case regarding damage to NJSC "Naftogaz of Ukraine". The International Society for Human Rights has monitored the hearing online.

At this hearing, the petition of the representative of the legal entities in respect of which the proceedings is being carried out - Koval N.M. in the interests of LLC "Energiya-Novy Razdel" on the cancellation of the seizure and return of property.

The petition is substantiated by the fact that criminal proceedings No. 52018000000000856 dated 09/06/2018 were separated from criminal proceedings No. 22016000000000243 dated 06/22/2016, in which, by a resolution of the Solomensky District Court of the city of Kiev dated 06/07/2018, property belonging to LLC "Energiya-Novy Razdel" was seized as a single property complex, without specifying an exhaustive list of seized property, and transferred to the management of the National Agency of Ukraine for identifying the search and management of assets received from corruption and other crimes.

According to the defense, the arrest is unfounded in terms of property, since the property is not material evidence, is not intended for the production of heat and electricity but is intended for the implementation of centralized water supply and sewerage. In addition, it is impossible to ensure the management of such property based on a management agreement concluded between the National Agency and the manager, since it is not intended for the production of heat and electricity. Unjustified arrest and management impede the implementation of the activities of the Company on centralized water supply and drainage.

The accused and the rest of the defenders supported the stated petition and asked the court to grant it.

The European Court of Human Rights recognizes seizure as a measure to control the use of property (“Raimondo v. Italy”). Therefore, when considering complaints related to the seizure of property, the Court requires that the actions of the authorities do not contradict the paragraph 2 of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, namely:

Every physical or legal person has the right to respect for their property. No one can be deprived of his property except in the public interest (“Feldes and Feldesne v. Hungary”) and under the conditions provided for by law and general principles of international law. The preceding provisions do not diminish the right of the state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to enforce the payment of taxes or other fees or fines.

The ECtHR also imposes other requirements for the seizure of property, such as: legality, the observance of a fair balance between the public interest and the protection of property rights, the possibility of appealing against the actions of the authorities to impose the seizure (“Chitaev and Chitayev v. Russia”) and the obligation of the authorities to keep the property in proper condition.

In addition, the Court reiterates that, while any arrest entails losses, the actual losses incurred should not exceed those that are unavoidable (“Djukis v. Lithuania”; “Borzhonov v. Russia”).

Prosecutor Garvanko I.M. provided oral and written explanations in which he asked to reject the petition. In support of his position, he noted that LLC “Energiya-Novyy Razdel” as a single property complex was an instrument of criminal offenses incriminated to the participants of an organized group of criminal offenses in 2013-2015. The seizure of property in criminal proceedings is to ensure the inevitability

of the onset of negative consequences for a person for committing criminal offenses due to the deprivation of such a person of the economic benefits obtained as a result of his illegal behavior, and to prevent such a person from obtaining any benefit as a result of the commission of a criminal offense, including proceeds from it. The detective, according to the prosecutor, proved the status of the single property complex of LLC “Energiya-Novyy Razdel”, as material evidence in accordance with the requirements of Article 98 of the Criminal Procedure Code of Ukraine.

Thus, in the opinion of the prosecution, the need for arrest is motivated by the fact that the property is an instrument for committing a crime and by the decision of the detective is recognized as material evidence.

As noted by the European Court of Human Rights, in accordance with established practice reflecting the principle of the proper administration of justice, decisions of courts and tribunals must properly set out the arguments on which they are based (“Papon v. France”).

In accordance with the requirements of Articles 94, 132, 173 of the Code of Criminal Procedure of Ukraine, when deciding on the seizure of property, the investigator, the judge must take into account the legal grounds for the seizure of property, the possibility of using property as evidence in criminal proceedings or the application of special confiscation, the existence of a reasonable suspicion of the commission by a criminal offense of an unlawful benefit that a legal entity has received, the reasonableness and proportionality of the restriction of property rights by the task of criminal proceedings, as well as the consequences of the seizure of property for the suspect, third parties.

The court, after consulting, made a decision to reject the petition to cancel the arrest and return the property.

3.39 The trial of Vladimir Pakholok

Monitoring of the case of Vladimir Miroslavovich Pakholok (09/15/2020)

On September 15, 2020, the Frankovsky District Court of Lvov considered the case in criminal proceedings number 12020140080001455 on the suspicion of Pakholok Vladimir Miroslavovich of committing theft with penetration into the premises provided for in Article 185, Part 3 of the Criminal Code of Ukraine.

Based on the materials of the pre-trial investigation, 08/28/2020 Pakholok V.M. in order to steal someone else's property, damaged the front door and entered the storeroom of the Communal non-profit enterprise "2nd city polyclinic in Lvov" and stole property for 1924.62 hryvnias.

Criminal proceedings on the suspicion of V.M. Pakholok was considered by the investigating judge Kuz V.Ya. The International Society for Human Rights is starting to monitor this case.

The course of the hearing. Investigator Segeda M.M. filed a petition for the application of a measure of restraint to the suspect Pakholok V.M. in the form of detention for a period of 60 days. The investigator referred to the existence of risks under Art. 177 of the Criminal Procedure Code of Ukraine, in particular, that the suspect may later hide from the pre-trial investigation authorities, as well as commit another criminal offense. Pakholok V.M. is previously convicted for committing crimes against property, including serious ones, the previous convictions have not been canceled in the manner prescribed by law. In addition, during 2019 and 2020, a number of indictments against V.M. Pakholok were sent to individual courts of the city of Lvov and the Lvov region.

The prosecutor of the Lvov local prosecutor's office Burdin S.N. fully supported the petition of the investigator Segeda M.M. and asked to satisfy it.

The suspect Pakholok V.M. at the hearing explained that he does not care what decision will be taken by the court. He also said that he

was registered with the probation department for previous sentences. The suspect also said that he had evidence at home that he is sick with tuberculosis, there was a certificate from the place of detention and a birth certificate.

It should be noted that subsequently the question may arise about the need for treatment of V.M. Pakholok. if the court applies a measure of restraint in the form of detention. Conditions of detention in Ukraine have often been found by the European Court to be in violation of Article 3 of the ECHR. In addition, the Court notes factors such as overcrowding and unsanitary conditions in cells and their negative impact on the health and well-being of persons in detention for a long time ("Kalashnikov v. Russia", "Florea v. Romania").

However, the International Society for Human Rights recognizes that the suspect knew (according to him) about his illness before the alleged criminal offense. This does not relieve the state of the obligation to ensure an adequate level of health care, but this fact must still be subsequently taken into account by both the national court and the European Court of Human Rights, in case of application.

The ECtHR considers that it is unacceptable to leave prisoners in an institution where there are no adequate means for adequate treatment of tuberculosis, or denying them access to such means. In addition, the inaccessibility of adapted conditions of detention, combined with the failure to isolate healthy prisoners from those suffering from infectious diseases such as tuberculosis, can not only cause physical and mental suffering to prisoners requiring treatment, but also contribute to the spread of the disease and have serious negative consequences for all prisoners in general. In such cases, the ECtHR highlights a violation of Article 3 of the Convention (case "Logvinenko v. Ukraine", paragraphs 76-77).

The judge, taking into account the statement of Vladimir Pakholok that he had tuberculosis disease, made a decision to elect the suspect a measure of restraint in the form of detention for 8 days to enable the pre-trial

investigation body to collect documents that would characterize and identify a person, including documents on the state of health of the suspect Pakholok V.M.

3.40 The trial of Roman Petruk

Monitoring of the case of Roman Andreevich Petruk (session 08.03.2020)

On August 3, 2020, in the Novograd-Volynsky city court of the Zhytomyr region, a court hearing in the case of Petruk Roman was held. He is accused of committing a crime under Part 2 of Article 289 of the Criminal Code of Ukraine, namely: illegal seizure of a vehicle repeatedly or by prior conspiracy by a group of persons, or combined with violence that is not dangerous to the life or health of the victim, or with the threat of such violence, or committed with penetration into a room or other storage facility, or with significant material damage.

Criminal proceedings on charges against R.A. Petruk considered single-handedly by judge Nagornyyuk Y.V. The International Society for Human Rights is starting to monitor this case.

The course of the court session: At the beginning of the trial, it was established that the victims did not appear at the court session for reasons unknown to the court.

The defendant's lawyer, V.A. Radziwil, filed a motion to bring the victims, noting that this was not their first failure to appear in court. The defense also expressed the opinion that it is necessary to switch to the examination of written evidence of the case (if the victims will fail to appear again) in order not to violate the principle of reasonableness of the terms of the trial.

Other participants in the court proceedings supported the opinion of the defense lawyer.

In addition, at the beginning of the session, the decision to change the prosecutor in this case was attached to the case file.

After examining the materials of the criminal proceedings, after hearing the opinions of the participants in the proceeding, the court

came to the following conclusions:

In accordance with the requirements of Article 325 of the Code of Criminal Procedure of Ukraine, if the victim did not appear at the hearing when summoned, duly notified of the time and place of the hearing, the court, having heard the opinion of the participants in the proceedings, depending on whether it is possible in his absence to find out all the circumstances during the trial, decides whether to conduct a trial without a victim or to postpone the trial. The court has the right to impose a monetary penalty on the victim in the manner provided for by Chapter 12 of the CCP of Ukraine.

According to Article 139 of the Code of Criminal Procedure of Ukraine, if the victim, who was summoned in the manner prescribed by the Code (in particular, there is confirmation of his receipt of the summons or familiarization with its contents in another way), did not appear without good reason or did not report the reasons for his non-arrival, the court postpones the proceedings and has the right to issue a resolution on imposing a monetary penalty on the victim in the amount of 0.5 to 2 times the subsistence level for able-bodied persons.

In this respect, one should also refer to the practice of the European Court of Human Rights. So, in particular, paragraph 26 of the judgment of the ECtHR of May 15, 2008 in the case "Nadtochy v. Ukraine" states that the principle of equality of arms is one of the components of the broader concept of a fair trial - provides that each party must have a reasonable opportunity to present its position under conditions that do not place it in a substantially disadvantageous position compared to the opposing party ("Dombo Beheer v. the Netherlands").

Each party must be given the opportunity to know and comment on the observations or evidence submitted by the other party, including the other party's appeals ("Bier v. Austria").

Thus, the consideration of the case in the absence of a participant in the trial, regarding which there is no information about the delivery of a summons to him, is a violation of Article 6 of the Convention for the Protection

of Human Rights and Fundamental Freedoms.

Considering the above, the court ruled to impose on each victim a monetary penalty in the amount of 0.5 of the subsistence minimum for able-bodied persons.

3.41 The trial of Andrey Polivoda

Monitoring of criminal proceedings of Andrey Polivoda (hearing on 11.25.2020)

On November 25, 2020, the Solomensky District Court of the city of Kiev considered case No. 760/20778/16-k on charges of Andrey Polivoda of committing a crime under Part 2 of Article 345 of Ukraine, namely, intentionally inflicting beatings on a law enforcement officer, light or medium severity of bodily harm in connection with the performance of this employee's official duties.

Recall that Andrey Polivoda was detained on 10/01/2016 near the Court of Appeal of the city of Kiev for an attack on a police officer, when the accused tried to "break through" to the trial in the case against Andrey Romanyuk, Evgeny Koshelyuk, Vita Zaverukha, Nikolay Mnishenko and Danil Sitnikov, known as the name "case of Zaverukha" or "case of Vinnytsa terrorists".

The court session on November 25, 2020 began with the interrogation of witnesses for the defense, one of whom was former member of the Parliament Igor Lutsenko and lawyer in the "Zaverukha case" Alina Samarets.

Before the start of the interrogation, the judge warned the witnesses about criminal responsibility for giving deliberately false testimony.

During the interrogation, lawyer Alina Samarets emphasized that the case of 10/01/2016, which was considered in the Kiev Court of Appeal, was open, therefore, in her opinion, the police officers exceeded their powers, in particular when they did not allow activists and journalists to go to this hearing as free listeners.

After the interrogation of both witnesses, the defense announced its desire to interro-

gate eight more witnesses at the next hearing. The prosecutor spoke against the advisability of interrogating such a number of witnesses, since none of the previous ones, in his opinion, said any specific information that could directly relate to the indictment against Andrey Polivoda.

In such cases, the European Court of Human Rights notes that an assessment of the importance of a witness can be made on the basis of an analysis of the importance of this particular evidence in the structure of the indictment and, accordingly, the sentence ("Birutis and Others v. Lithuania", paras. 28-35).

The International Society for Human Rights believes that such a position of the ECtHR can be interpreted in such a way that only by questioning a witness can the importance of his testimony in a particular case be assessed. Hence, we can come to the following conclusion: the value judgment of the prosecutor that none of the previous witnesses, in his opinion, indicated any specific information that could directly relate to the indictment, cannot be taken as fundamental.

Although it is not the function of the ECtHR to express an opinion on the suitability of the evidence presented, the lack of justification for refusing to examine or summon a witness may, in its opinion, lead to a restriction of the rights of the defense, incompatible with guarantees of a fair trial ("Popov v. Russia", para. 188; "Bokos- Guesta v. The Netherlands", para. 72; "Wierzbiki v. Poland", para. 45; "Vidal v. Belgium", para. 34).

Moreover, if the defendant's request to question witnesses is not burdensome, is sufficiently substantiated, is relevant to the subject of the charge and could strengthen the position of the defense or even lead to the acquittal of the accused, the domestic authorities must provide compelling reasons for rejecting such a request ("Topek v. Croatia", para. 42; "Polyakov v. Russia", paras. 34-35).

Following the specified legal positions from the practice of the ECtHR, the Solomenskiy District Court will question the witnesses of the defense at the next court hearings.

3.42 The trial of Sergey Popov

Monitoring of criminal proceedings of Popov S.V. (hearing 10.06.2020)

On October 6, 2020, in the Kremensky District Court of the Luhansk Region, a hearing was held in the case No. 433/300/19 on charges of Sergei Vyacheslavovich Popov of committing crimes under Part 4 of Art. 187, part 3 of Art. 289 of the Criminal Code of Ukraine (robbery, illegal seizure of a vehicle).

It should be noted that the indictment went to court on February 21, 2019. Thus, the case has been heard for almost 2 years. All this time, the accused is kept in custody.

Such a long time for consideration of the case is due to the fact that it was repeatedly transferred from one court to another. Initially, the indictment was filed with the Troitskiy District Court of the Luhansk Region. However, due to the lack of an opportunity to form a panel of judges, the case was transferred to the Starobelskiy District Court of the Luhansk Region. Then, due to the impossibility of forming the composition of the court in the Starobelskiy district court of the Luhansk region, on June 11, 2019, the case was transferred to the Rubezhanskiy city court of the Luhansk region. On January 23, 2020, the case was again transferred to another court, the Kremenskiy district court of the Luhansk region, on the basis of the impossibility of forming a composition of the court in the Rubezhanskiy city court of the Luhansk region to consider the specified criminal proceedings.

Due to the lack of judges in this case, the problem arises of non-observance of a reasonable time frame of the trial, since each time the case is transferred to a new court, the consideration of the case begins anew.

Art. 6 of the European Convention recognizes that every person prosecuted in a criminal case has the right to receive, within a reasonable time, a final decision on the justification of the charge against him, or rather to ensure that the accused do not remain under the weight of the charge for a long time and the validity of the charge (“Wemkhov v. Germany”, para. 18, “Giulia Manzoni v. Italy”,

para. 25, “Brogan and Others v. the United Kingdom”, para. 65).

According to the ECtHR, “by requiring the consideration of cases within a ‘reasonable time’, the Convention emphasizes the importance of administering justice without delay, which may jeopardize its effectiveness and credibility” (“Vernillo v. France”, para. 38). The reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the case and taking into account the following criteria: the complexity of the case, the conduct of the applicant and the relevant state authorities (“Pelissier and Sassi v. France”, para. 43).

The ECtHR recalls that the accused in criminal proceedings should have the right to have the proceedings in his case carried out with particular care, especially in the case of any restriction of freedom for the period until the end of the proceedings. Article 6 of the Convention requires the courts to use all available procedural means to establish the guilt or innocence of a person without undue delay. This requirement is intended to ensure the earliest elimination of uncertainty regarding the legal fate of the accused, who remains in a state of uncertainty throughout the entire period of proceedings, regardless of whether the proceedings are ongoing or have been suspended (“Doroshenko v. Ukraine”, para. 41).

Present at the hearing were the prosecutor L.V. Borovkova, the defender I.N. Shmuylova, and accused S.V. Popov. The translator and the victims did not appear. The prosecutor considered it possible to hold a hearing in the case with such an attendance. The accused and his defense counsel spoke out against the consideration of the case without victims, however, the court, having indicated that the participation of victims is not obligatory, decided to consider the case in this composition.

The prosecutor filed a petition to replace the interpreter, due to the fact that the previous interpreter did not appear at the court hearings. S.V. Popov challenged the interpreter on the grounds that she did not have a document confirming the specialty of an interpreter from Ukrainian into Russian. The defense attorney

supported her client's petition. Prosecutor L. V. Borovkova objected to the satisfaction of the application for challenge in connection with its unfoundedness.

The panel of judges refused to satisfy the request to challenge the interpreter. The court motivated its decision by the fact that there is no clear definition of the concept of "interpreter" in the norms of the criminal procedural law. From the analysis of the Criminal Procedure Code of Ukraine, it follows that the interpreter is a participant in criminal proceedings who is fluent in the state language, as well as the language of the participant in the proceeding, who needs translation into the language he knows. Before deciding the issue of admitting an interpreter to participate in the case, her competence was checked by the court, she is a citizen of Ukraine, knows the state language, is a teacher of Russian language and literature and has 34 years of teaching experience.

In paragraph 48 of the ECtHR judgment of November 28, 1978 in the case "Ludika, Thompson and Koch v. Germany", the Court noted that the right to free assistance of an interpreter applies not only to oral statements in court proceedings, but also to documentary materials and pre-trial proceedings. In particular, anyone charged with a criminal offense who does not understand or speak the language used in court has the right to receive free assistance from an interpreter who translates and interprets all those documents or statements in proceedings against him in order to understand what he needs or needs to be announced in court in the language that is used there in order to exercise his right to a fair trial. However, it cannot be considered that paragraph 3 (e) of Art. 6 of the Convention requires written translation of all written evidence or official documents that are in the proceedings. The assistance of an interpreter should be such as to ensure that the defendants understand the case against him and conduct his defense, in particular, due to the fact that through the interpreter he can put forward his version of events to the court (indicated in paragraph 74 of the ECtHR judgment of December 19, 1989 in the case "Kamazinski v.

Austria"). Also, given the need to ensure the reality and effectiveness of the law guaranteed by paragraph 3 (e) of Art. 6 of the Convention, the duty of the competent authorities is not limited to the appointment of an interpreter, but if warned, in specific circumstances, it can also expand, including the establishment of some control over the proper quality of the translation, as the Court expressed its opinion in paragraphs 33 and 36 of the judgment of May 30, 1980 in the case of "Artico v. Italy".

The court then continued to examine the evidence.

Monitoring of criminal proceedings of Sergey Vyacheslavovich Popov (hearing 11.03.2020)

On November 03, 2020, in the Kremensky District Court of the Luhansk Region, a hearing was held in case No. 433/300/19 on charges of Sergei Vyacheslavovich Popov accused of committing crimes under Part 4 of Art. 187, part 3 of Art. 289 of the Criminal Code of Ukraine (robbery, illegal seizure of a vehicle).

On November 03, 2020, the court considered the issue of extending the measure of restraint (detention) for the accused.

The prosecutor indicated that the accused is on the international wanted list, is wanted through Interpol channels and, if the measure of restraint is changed, is subject to immediate arrest. In addition, she provided for examination documents from the Office of the Prosecutor General of Ukraine that the according to the Department of the Ministry of Internal Affairs of Russia in the Belgorod Region S.V. Popov is wanted for criminal offenses on the territory of the Russian Federation.

The accused objected to the approval of the request for an extension of detention, asked to change the measure of restraint to 24-hour house arrest or to release him on bail. He argued his position by the fact that: - The position of the prosecutor that he can hide from the pre-trial investigation bodies or the court does not deserve attention. At any attempt to cross the border, he will be detained and arrested, since he is on the international wanted list. In addition, the accused indicated that the actual

transfer under the extradition procedure was postponed until the end of the criminal proceedings; - The accused cannot influence the witnesses and victims, since they have already been questioned; - The accused has strong social ties, has been legally married for over 20 years, has two children, a permanent place of work, a registered place of residence in the city of Kharkov.

In the accused's view, the length of detention for more than two years is not reasonable.

As a result of consideration, the prosecutor's request was granted.

The decision of the Kremensky District Court of the Luhansk Region states that "... when an accused is found on the interstate wanted list through Interpol channels, changing his measure of restraint may complicate or make it impossible to ensure his appearance in court sessions."

A similar problem has already been considered by the European Court of Human Rights. In "Quinn v. France", the applicant applied to the ECtHR and noted that the extradition proceedings are generally very expeditious and that in his case they lasted for almost two years, which is an evidence of abuse of the extradition procedure. The real aim of the French authorities was, according to him, to keep him at their disposal as long as it was necessary to conduct an investigation in France (para. 44).

The Court considers that detention pending extradition is, in principle, justified under Article 5 para. 1 (f).

Para. 1 of Article 5 requires, above all, the "lawfulness" of the detention, which means, *inter alia*, the need to comply with a procedure established by law. Here, the Convention, in fact, refers to the provisions of national law, but at the same time it requires that any deprivation of liberty be consistent with the purpose of Article 5, namely, to provide a person with guarantees against arbitrariness (para. 47).

In accordance with Art. 18 of the Convention, the restrictions allowed in this Convention in relation to the specified rights and freedoms shall not apply for purposes other than those for which they are established.

As regards the extension of the detention

period, the European Court of Human Rights notes that the domestic courts must first and foremost ensure that the detention of an accused person in a particular case does not exceed a reasonable time. To this end, they must, taking due account of the principles of the presumption of innocence, examine all the circumstances of the case that may confirm or deny the existence of a public need that justifies deviations from the requirement to respect individual liberty, and indicate this in their decisions to extend the term of detention ("IA v. France", para. 102).

The European Court of Human Rights points out that at the initial stages of the investigation, the possibility of obstruction of justice by the accused justifies the detention of such an accused. However, once evidence is gathered, this rationale becomes less convincing. In particular, as regards the possibility of putting pressure on witnesses, the Court reiterates that the domestic courts must show that during the relevant period of the applicant's detention there continued to be a substantial risk of intimidation of witnesses, it is not enough to rely only on some abstract possibility not supported by any evidence. The court must also analyze pertinent factors, such as progress in the investigation or proceedings, the applicant's personality, his behavior before and after arrest, and any other specific factors to justify the risks that he might abuse the returned freedom by acting in for the purpose of falsifying or destroying evidence, or putting pressure on victims ("Sokurenko v. Russian Federation", para. 88).

Having studied the legal position of the European Court in the case "Sokurenko v. Russian Federation", it can be concluded that the prosecutor, when applying for an extension of the period of detention, must, among other things, provide real facts confirming the existence of the risk of intimidation of witnesses. However, in the present case no such facts were presented.

Having studied the decision of the Kremensky District Court of the Luhansk Region of September 8, 2020 to extend the period of detention, it is worth noting that it was based

on the same grounds as in the current decision. Observers are concerned that the extension of detention in this case may be automatic.

3.43 The trial of Inna Popovskaya

Monitoring of the case of Popovskaya Inna Petrovna (hearing on June 24, 2020)

On June 24, 2020, the Appellate Chamber of the Supreme Anti-Corruption Court considered the appeal of the prosecutor and lawyer of the accused I.P. Popovskaya on the decision of the investigating judge on the application of a measure of restraint in the form of bail in case No. 991/4815/20 on the charge of Popovskaya Inna Petrovna - Director of the Department of Communal Property of the Odessa City Council, Chairman of the Standing Commission and Head of the Legal Department of the Odessa City Council, in the commission of crimes under Part 5 of Article 27 of the Criminal Code of Ukraine (complicity), part 5 of Article 191 of the Criminal Code of Ukraine (misappropriation, embezzlement or seizure of property by abuse of official position committed on an especially large scale or by an organized group). Popovskaya Inna is accused of taking possession of the funds of the territorial community of Odessa when the city purchased non-residential buildings of the former “Zastava” airfield on Tiraspol'skoe highway, 22g for almost UAH 150 million, allegedly for the expansion of the Western cemetery.

Criminal proceedings are considered collegially, consisting of a judge: M.S. Glotov, O.F. Pavlyshin, O.Y. Semennykov. The hearing on this case was scheduled for 4:00 pm. The International Society for Human Rights began monitoring this case using the official video broadcast on the website of the Judicial Power of Ukraine due to the difficulty of the personal presence of the ISHR observers in the courtrooms.

The course of the hearing. At the hearing the accused Popovskaya I.P. objected to the appeal of the prosecutor, who asked the court to revise the amount of the bail in the direction of its

increase from UAH 630.600 to UAH 5.658.000, since, in her opinion, the accusation itself is unfounded and not motivated.

According to her, the suspicion was based on the false accusation of a group of persons with her participation in the use of a corruption scheme to buy out buildings and structures to expand the Western cemetery in Odessa, according to which, officials could embezzle UAH 131 million inflating the price of land on the site of the location of “Odessa” Airlines LLC.

Moreover, in the accused's opinion, the risks referred to by the prosecutor are not justified. The prosecution has no evidence to support the above risks. The court-appointed bail in the amount of UAH 630.600 for a period of 2 months is excessive and unreasonable. Popovskaya I.P. asked the court to cancel the decision of the investigating judge and make a new decision to refuse to apply a measure of restraint.

The ECtHR reiterates on this point that the requirement that suspicion should be based on reasonable grounds is a significant part of the guarantee against arbitrary detention. Moreover, in the absence of reasonable suspicion, a person cannot under any circumstances be detained or taken into custody for the purpose of forcing him to confess to a crime, testify against other persons or in order to obtain from him facts or information that may serve as a basis for reasonable suspicion. (“Cebotari v. Moldova”, para. 48). According to I. Popovskaya, her charge of committing a crime is based on speculation without any evidence.

The International Society for Human Rights agrees with the ECtHR that incompetence and improper work of state authorities, which may lead to the establishment of an unfair amount of bail, can be considered a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms. Since the issue under consideration is the fundamental right to freedom guaranteed by Article 5, the authorities should make every effort to establish an appropriate amount of bail. In addition, the amount of the bail must be properly justified (“Gafa v. Malta”, para. 70, “Manguras v.

Spain”, paras. 79-80).

Also, the accused supported the appeal of her lawyer Lysak O.M. The defense objected to the prosecutor’s complaint, referring to the groundlessness of suspicions and lack of evidence of the existence of the risks provided for by Article 177 of the Criminal Procedure Code of Ukraine. The lawyer asked the court to cancel the decision of the investigating judge and make a new decision refusing to apply a measure of restraint.

The prosecutor of the Specialized Anti-Corruption Prosecutor’s Office of the Office of the Attorney General objected to the complaint of the defense, and also upheld his appeal. Citing the fact that the accused Popovskaya I.P. may try to hide from the pre-trial investigation authorities, unlawfully influence witnesses, destroy or distort evidence due to the fact that she was not removed from office and she has free access to evidence.

The pre-trial investigation established that the price of the land was over UAH 146 million. However, an examination within the framework of the investigation, established that its real cost was about UAH 15 million, that is, the price was actually overstated 10 times.

In addition, the prosecution disagrees with the size of the bail and asks the court to change the decisions of the investigating judge regarding the size of the bail and choose a bail of UAH 5 million 658 thousand. According to the prosecutor, the suspicion is motivated given the fact that the criminal acts of I.P. Popovskaya consist precisely in complicity, which turned out to be in the approval of the draft decision on the implementation of the sale and purchase of buildings and structures on a land plot measuring 141 hectares, on which the “Odessa” Airlines LLC is located. She did not carry out a legal examination of the appraisal of the value of these objects.

The court, having consulted, decided to refuse to satisfy the appeal of the prosecutor of the Specialized Anti-Corruption Prosecutor’s Office of the Office of the Prosecutor General and refuse to satisfy the appeal of the defense lawyer Lysak O.M, leaving the decision of the investigating judge unchanged.

3.44 The trial of Grigory Radutny and others

(07/08/2020)

On July 8, in the Pechersky District Court of Kiev, a hearing was held on the case of the fifth President of Ukraine Petr Poroshenko.

This was the third hearing to elect Poroshenko a measure of restraint for Poroshenko.

P. Poroshenko is suspected of having persuaded the head of the Foreign Intelligence Service (hereinafter - FIS) Yegor Bozhko to an illegal order, namely, to appoint Sergei Semochko to the post of deputy head of the FIS.

Course of events:

June 10, 2020 - P. Poroshenko was informed of the suspicion on behalf of the Prosecutor General.

June 18, 2020 - the election of a measure of restraint began in the Pechersky Court. Prosecutors announced a petition to choose a measure of restraint for the ex-president in the form of detention, but later changed the petition to a personal obligation.

July 1, 2020 - a hearing was held at which the petition of the prosecutors was considered, but later the judge announced a break in the session.

July 8, 2020 - they continued to consider the petition; at the hearing they began to interrogate two attesting witnesses who were present during the presentation of the suspicion to Poroshenko. The defense asked whether the prosecutors had shown them the decree on the power of attorney to perform procedural actions, but one of them noted that he did not remember this, but allegedly later he saw the original document.

According to P. Poroshenko, the presentation of suspicion to him took place with a number of violations of procedural legislation, which means that there was no suspicion, however, the prosecution did not agree with this. Prosecutors stated that the defense is constantly looking for reasons to avoid obtaining the document. At the same time, the prosecutor points to the fact that all documents are in the materials of criminal proceedings and the

defense has the opportunity to get acquainted with them.

Since P. Poroshenko claims that he did not see the aforementioned resolution, the defense considers it as falsification of documents. In particular, in order to hand over the suspicion to P. Poroshenko, the employees of the General Prosecutor's Office had to show three documents: a report of suspicion, a decree on a power of attorney to perform procedural actions and the very order to carry out procedural actions.

Throughout the hearing, the ex-president accused the prosecutors of committing a crime (falsification of documents), also stated that they would become suspects and be held accountable for this, and pointed out that the prosecutors were following Babikov's instructions (lawyer of the ex-president V. Yanukovych), Prosecutor General Venediktova and current President Zelensky. Any humiliating phrases of Poroshenko in the direction of the accusation were heard in the courtroom with applause from the activists, as well as shouts: "Shame!" Directly, such actions on the part of the suspect can be regarded as pressure on the prosecution.

Later, after a short break in the session, unexpectedly for everyone, one of the prosecutors announced the completion of the pre-trial investigation, therefore, he believes that consideration of the petition for choosing a measure of restraint is impossible.

The defense drew the court's attention to the fact that, as follows from the report, the investigation was completed on July 7, at the same time the decision to extend its terms was made by the Pechersky court on July 8, and the prosecutors did not inform the court about the completion of the proceedings.

One cannot fail to point out the fact that "supporters" of the fifth president traditionally gathered next to the court with posters "No to political repression!" etc. As practice shows, such actions can be regarded as an attempt to intervene in the trial and influence the decision-making by the court, because this can be perceived by the judges as psychological pressure. A similar situation was noted by

the observers of the ISHR in the cases of V. Muravitsky, A. Melnik, E. Mefedov.

According to the case law of the ECtHR, mere signs of pressure on the court may be enough to call into question the fairness of the trial. If there is a chance that the executive branch may change the decision or suspend its execution, then this deprives the characteristic of an "independent" court (paragraphs 45-55 of the case "Van de Hurk v. The Netherlands").

Article 6 § 1 of the Convention requires the independence of the court from the other branches of government (i.e. the executive and legislative) and from political parties ("Ninn-Hansen v. Denmark"). Also, the ECtHR notes that the national courts are composed entirely of professional judges, whose experience and qualifications, in contrast to the jury, allow them to resist any external influences (para. 104 of the case "Craxi v. Italy"; para. 75 of the case "Mircea v. Romania"). As a result, the court left without consideration the petition of the prosecutors to choose a measure of restraint.

3.45 The trial of Grigory Radutny and others

Monitoring of the criminal proceedings of Radutny Grigory Vyacheslavovich, Gonchar Vitaliy Valerevich, Shmorgun Sergey Ivanovich (04/01/2020)

On April 01, 2020, in the Lutsky City Court of the Volynsky Region, a hearing was held in case No. 164/63/19 on charges of Radutny Grigory Vyacheslavovich, Gonchar Vitaliy Valerevich, Shmorgun Sergey Ivanovich in committing a criminal offense under part 3 of Article 187 of the Criminal Code of Ukraine (robbery with penetration into housing, another premise or storage). The indictment was filed to the court on January 31, 2019.

During the trial, a witness was questioned. He was provided with a translator, since he does not speak the Ukrainian language at the required level.

After interrogation, the court provided the opportunity for the accused to testify.

Shmorgun S.I. limited himself to the statement that he had not committed a criminal offense. Gonchar V.V. asked the court to give him more time to prepare for testimony. Radutny G.V. refused to testify, referring to the fact that “. . . I have a lot of case materials that I still need to familiarize myself with. . . I have no privacy with my defense counsel.” To which the Court indicated that the accused had “more than enough time . . . each court hearing the accused was warned that it was necessary to be prepared to testify”. In addition, the Court stated that “every court session gives the court the impression that it is the defendants who drag out the trial. “Every court hearing is adjourned, in the court’s opinion, for no reason.”

As indicated in the statement of the Supreme Court of March 19, 2019 in case No. 748/636/16, “the party involved in the trial is obliged to conscientiously use its procedural rights and steadily fulfill its procedural obligations”.

A superficial analysis of the court schedule shows that the case is being heard in court quite actively. Hearings in the court of first instance are held monthly. According to the judge, the accused were warned about the need to testify and, according to the court, could initiate confidential communication with a lawyer in advance, familiarization with the materials of the criminal proceedings. However, based on the comments of the judges and the accused themselves, the latter neglected the exercise of their rights.

It should be noted that the court’s statements regarding the unreasonable adjournment of court hearings are of interest, since it is the court that makes the decision to continue the hearing, or announce a break. In addition, such judges’ treatment of the accused may give the impression of a violation of the principle of the impartiality of the court.

However, in connection with the defendant’s request for confidential communication with the defense counsel, the proceedings were postponed.

In addition, the court examined the issue of extending the terms of detention at the request of the prosecutor, which, according to the

practice already established for the Ukrainian prosecutor’s office, limited itself to the following argument: “risks stipulated by Article 177 Code of Criminal Procedure of Ukraine has remained unchanged at present”. The International Society for Human Rights once again notes that according to the Ukrainian procedural law, an exceptional measure of restraint in the form of detention can be applied only if the prosecutor proves that none of the milder measures of restraint can prevent the risks of the defendant not fulfilling his procedural obligations (Article 183 of the Code of Criminal Procedure). As a result of consideration of the petition of the prosecution for the extension of the measure of restraint in the form of detention and the petition of the defense to change the measure of restraint to round-the-clock house arrest, the court decided to extend the detention for 60 days.

As the court indicated, “at the hearing the prosecutor proved the existence, at present, of risks that have not disappeared, as defined by Article 177 Code of Criminal Procedure of Ukraine. Radutny G.V., Gonchar V.V., Shmorgun S.I. accused of committing a particularly serious crime, for which a penalty of imprisonment of up to 12 years is prescribed. In addition, Radutny G.V. does not have a permanent residence. And also, there are no medical data on the impossibility of being detained. And, there is reason to believe that the accused will not comply with the procedural obligations assigned to them if they choose a measure of restraint not related to deprivation of liberty. Being free, they can commit another criminal offense.”

Despite the fact that each of the parties can cause a delay in the consideration of the case, and in this proceeding the court directly stated that the behavior of the accused helps to delay the proceeding, the question of the measure of restraint cannot be considered superficially. The prosecutor, arguing the need to extend the terms of detention, stated: “Given the defendants’ request for confidential communication with lawyers, familiarization with the case file, it will be impossible to complete the judicial review before April 11 (the date of the end

of detention).” Undoubtedly, this should not be the basis for the automatic extension of detention and the objective observer, who is the ISHR, has the impression that the deadlines are automatically extended. Such court actions may have signs of violation of Part 3, Article 5 of the European Convention.

The European Court of Human Rights has often found a violation of Article 5 of the Convention in cases where the national courts continued to be detained, referring mainly to the gravity of the charges and using template language, without even considering specific facts or the possibility of alternative measures (“Kharchenko v. Ukraine”, paras 80-81; “Tretyakov v. Ukraine” para. 59).

The existence of a reasonable suspicion of a crime committed by a detained person is an indispensable condition for the legality of his continued detention, but after the lapse of time such a suspicion will not be sufficient to justify prolonged detention. The ECtHR never tried to translate this concept into a clearly defined number of days, weeks, months or years, or at different times depending on the severity of the crime. Once “smart suspicion” is no longer sufficient, the court must establish that the other grounds given by the courts continue to justify the person’s deprivation of liberty (“Maggie and Others v. The United Kingdom”, paras. 88-89).

The court also recalls the immutability of the grounds for suspicion. That an arrested person has committed an offense is a *sine qua non* condition in order for his continued detention to be considered legal, but after a while this condition is no longer sufficient. Then the Court must establish that the other grounds on which the decisions of the judiciary are based continue to justify the deprivation of liberty. If these grounds turn out to be “relevant” and “sufficient”, then the Court will ascertain whether the competent national authorities found “special good faith” in the conduct of the proceedings (“Labita v. Italy”, para. 153).

Also, one should pay attention to the technical shortcomings of the work of the judicial authority website, which the representatives of the ISHR were able to identify through moni-

toring of this case.

Today, in quarantine, monitoring of many cases is carried out by viewing broadcasts of court hearings on the judicial authority’s website. So, case No. 164/63/19 in the calendar of broadcasts of court hearings was dated May 01, 2020. However, when watching the video itself on YouTube, we found that the hearing took place on April 01, 2020.

3.46 The trial of Anton Rosevtsov and others

Monitoring of criminal proceedings of Rosevtsov Anton Alexandrovich and Bozhy Yaroslav Yurievich (10/26/2020)

On October 26, 2020, a hearing was held in the Leninsky District Court of the city of Zaporozhye in the case of Anton Alexandrovich Rosevtsov and Yaroslav Yuryevich Bozhy, who are accused of committing a brutal murder in Verkhnyaya Khortitsa. According to the investigation materials, 25-year-old Danil Gribko was shot twice in the back of the head when he was in the front passenger seat of his car. His body was hidden in the garage of the cooperative where the murder was committed. Two days later, the mother of the murdered man received messages demanding that money be transferred for the return of her son, although he was already dead. Ten days later, the closest friend of the murdered man, Yaroslav Bozhy, was detained. According to the investigation, he, together with his friend Anton Rosevtsov, planned the murder in order to take possession of the victim’s car (source - <https://www.vv.com.ua>). The accused are charged with the commission of premeditated murder by a group of persons by prior conspiracy from mercenary motives; illegal seizure of a vehicle; extortion and illegal handling of weapons (paragraphs 6, 12, part 2 of article 115, part 3 of article 289, part 2 of article 189, part 1 of article 263 of the Criminal Code of Ukraine).

The case was monitored online for the first time. The case was considered by a panel of judges: Turbina Tatyana Fedorovna, Barulina

Tamara Evgenievna, Gnatyuk Alexander Nikolaevich.

In this court session, a study of evidence was carried out - a mobile phone. Information about the car in which the murder was committed was investigated.

After examining the evidence, the court announced a break for more than two weeks - until 11/13/2020.

The indictment was received by the Leninsky District Court of Zaporozhye on 07.03.2015. Thus, the case has been heard in the court of first instance for more than five years. Observers of the ISHR are concerned about the timing of the case. The lengthy consideration was due to the following reasons: the hearing was postponed due to the witness's failure to appear in court; the case was referred to another collegium; during the trial, the accused filed a large number of challenges to judges, which were dismissed; lawyers have changed several times.

Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) recognizes for every person prosecuted in a criminal case the right to receive, within a reasonable time, a final decision on the justification of the charges against him, or rather, the achievement of ensuring that the accused do not remain for a long time under the weight of the charge and that a decision is made on the validity of the charge (“Vemkhov v. Germany”, paragraph 18, “Julia Manzoni v. Italy”, paragraph 25, “Brogan and Others v. United Kingdom”, paragraph 65).

According to the ECtHR, “by requiring the consideration of cases within a ‘reasonable time’, the Convention emphasizes the importance of administering justice without delay, which may jeopardize its effectiveness and credibility” (“Vernillo v. France”, paragraph 38). The reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the case and taking into account the following criteria: the complexity of the case, the conduct of the applicant and the relevant public authorities (“Pelissier and Sassi v. France”, paragraph 43).

The ECtHR recalls that the accused in criminal proceedings should have the right to have the proceedings in his case carried out with particular care, especially in the case of any restriction of freedom for the period until the end of the proceedings. Article 6 of the Convention requires courts to use all available procedural means to establish the guilt or innocence of a person without undue delay. This requirement is intended to ensure the earliest elimination of uncertainty regarding the legal fate of the accused, who remains in a state of uncertainty throughout the entire period of proceedings, regardless of whether the proceedings are ongoing or have been suspended (“Doroshenko v. Ukraine”, paragraph 41).

3.47 The trial of Yuri Rossoshansky

Monitoring the case of Yuri Rossoshansky (Session May 15, 2020)

On May 15, 2020, a hearing was held in the Shevchenkovsky District Court of Kiev in the case of Yuri Rossoshansky. Yuri Rossoshansky is charged with the murder of lawyer Irina Nozdrovskaya. He is charged with paragraph 4 of Part 2 of Art. 115 (intentional murder committed with particular cruelty) of the Criminal Code of Ukraine.

December 29, 2017 it became known about the disappearance of the famous human rights activist, lawyer Irina Nozdrovskaya. And on January 1, 2018, her body was found in a river near the village of Demidov in the Kievsky region. After some time, the police detained the murder suspect - Yuri Rossoshansky. Then he confessed to the crime, stating that he had killed I. Nozdrovskaya out of personal hostility, but he soon abandoned his testimonies. The defendant faces up to 15 years or life imprisonment.

At this session, the question of the advisability of extending the measure of restraint was considered. The prosecutor filed a motion to extend the measure of restraint for another 60 days because Y. Rossoshansky was charged with a particularly serious crime. In his opin-

ion, this will make it possible to prevent the commission of new crimes, as well as exerting influence on victims and witnesses. In this case, he draws attention to the hostile relationship that has developed with members of the family of I. Nozdrovskaya, who live in the same village with the accused. In this regard, the ISHR considers it necessary to indicate that the murder of Irina Nozdrovskaya is associated with the fact that she was a lawyer of the victim in the case of the murder of her sister - Svetlana Sapatinskaya. Guilty of the death of S. Sapatinskaya was found Dmitry Rossoshansky - the son of Yuri Rossoshansky.

The prosecutor referred to the risks stipulated by the Code of Criminal Procedure and noted that at the moment they persisted and other measures of restraint were insufficient to ensure the effectiveness of this proceedings. According to the prosecutor, the risks also exist because the accused may be hiding from the court. The lawyer of the victims supported the prosecutor.

The defense objected to the satisfaction of the prosecutor's request, since the accused has been in custody for a long time (since January 2018). Attorney of Y. Rossoshansky believes that this violates the principle of legal certainty and it is necessary to resolve the issue of changing this measure of restraint to a personal obligation.

As for the risks, the defense side drew the court's attention to the fact that: 1) Witnesses in the case have already been questioned and there is no risk of influence on them; 2) Regarding the risk of hiding from the court, the person's social connections, age, whether crimes have been committed before, etc. must be taken into account. The accused is a pensioner, he is characterized positively at the place of residence and place of work, has not been prosecuted before.

Referring to this, the lawyer of Rossoshansky believes that the risks indicated by the prosecutor are unfounded and claims that his client did not commit this crime, therefore, there are not only no risks, but also objective evidence on which he was prosecuted. Yuri Rossoshansky fully supported his defender.

Also, the defense drew the court's attention to the fact that, according to the Cabinet of Ministers Decree No. 211 of March 11, 2020, on self-isolation of persons over 60 years old, in connection with the situation in Ukraine, there is a risk of infection and the defendant is at risk. Therefore, according to the defense, the measure of restraint must be changed.

The ECtHR has repeatedly found a violation of Article 5 § 3 of the Convention in cases in which the domestic courts extended the applicant's detention, referring mainly to the gravity of the charges and using stereotyped language, not taking into account the specific situation and not considering alternative measures of restraint "(paragraph 144 of the judgment, dated May 22, 2012 in the case of "Idalov v. Russia").

The Court observes that over time, the initial reasons for detention are becoming less and less substantial, and that the courts must proceed from "substantial" and "sufficient" grounds for prolonged imprisonment (paragraph 54 of the judgment, dated February 10, 2011 in the case "Pelevin v. Russian Federation").

However, the ECtHR accepts that the danger of a relapse if convincingly proven may constitute a basis for the judicial authorities to place a suspect in custody and to extend his detention in order to prevent any attempt to commit new crimes. In addition to observing other conditions, it is necessary that the danger is real, and that the assessment of the degree of danger be accurate, taking into account the circumstances of the case and, in particular, the previous facts and the identity of the suspect (paragraph 155 of the decision, dated June 24, 2010 in the case of "Veliyev v. Russia Federation").

As regards to the risk of influencing witnesses and victims, the Court recalls in this connection that if, at the initial stages of the investigation, the risk of the accused being involved in the administration of justice could justify his detention, then after the evidence has been gathered, this reason may not become so obvious (Paragraph 69 of the judgment, dated September 20, 2011 in the case of

“Fedorenko v. Russia”).

The International Society for Human Rights considers this proceeding to be extremely important, since earlier, together with the Initiative Group for the Defense of Lawyers, ISHR was involved in the study of violations of the rights of lawyers - “Defenseless Defenders” and, in this regard, has a lot of information about violations of the rights of lawyers in connection with their work in a specific proceedings. The murder of I. Nozdrovskaya is a vivid example of the insecurity of representatives of the lawyer profession. And, of course, a matter of considerable public interest.

As a result, the court granted the prosecutor’s motion to extend the measure of restraint by 60 days. The International Society for Human Rights will continue to monitor and refine the details of this proceeding.

Monitoring of the case of Yuri Rossoshansky (Session June 3, 2020)

On June 3, 2020, the consideration of the case of Yuri Rossoshansky continued in the Shevchenkivsky District Court of Kiev.

Yuri Rossoshansky is charged with the murder of human rights activist Irina Nozdrovskaya. He is charged with paragraph 4 of part 2 of Article 115 (premeditated murder, committed with extreme cruelty) of the Criminal Code of Ukraine.

On December 29, 2017, it became known about the disappearance of the well-known human rights activist Irina Nozdrovskaya. And on January 1, 2018, her body was found in the river near the village of Demidov, Kiev region. Sometime later, the police detained a murder suspect, Yuri Rossoshansky. Then he confessed to what he had done, saying that he had killed Nozdrovskaya out of personal enmity, but he soon recanted his testimony. The accused faces up to 15 years or life imprisonment.

The hearing began 30 minutes late due to a problem with the technology used to view the videos. Earlier, several sessions did not take place due to quarantine measures that are being carried out by the state.

The consideration of the case stopped at the statement of the accused about pressure on

him. On this occasion, an appeal was sent to law enforcement agencies to verify all the circumstances. It was also decided to investigate the relevant video recordings of the conversation between the accused and law enforcement officers on January 8, 2018 (recorded immediately after the arrest of Yuri Rossoshansky). On the recording, one could hear that the accused talks about all the circumstances that happened, and also complains that the victim herself constantly provoked a conflict and pushed other people to do so, there were repeated threats to his family.

After watching the video, the defense lawyer of the accused drew attention to the fact that:

- 1) It is necessary to look at the date and time of the beginning of the recording (08.01.2018 11:29:03am) corresponding to the protocol, at the place of the “interrogation”, namely the Vyshgorod police department, and also at the fact that there is no lawyer from the Center for the provision of free secondary legal aid Lychik M.M., who was obliged to arrive to defend the suspect at 08:35 am that day. According to Part 1 of Article 52 of the Criminal Procedure Code of Ukraine, the participation of a defense attorney is mandatory in criminal proceedings in respect of especially grave crimes. In this case, the participation of a defense attorney is ensured from the moment the person acquires the status of a suspect. The case law of the ECtHR in its decision’s notes that the right of a person accused of a crime to an effective defense a lawyer is one of the fundamental characteristics of a fair trial proceedings (para. 51 of the “Salduz v. Turkey” judgment). Usually, the suspect must be granted access to legal aid from the moment he is arrested by the police or taken into custody (para. 31 of the “Dayanan v. Turkey” judgment). The right of the accused to effectively participate in the proceedings in a general sense includes not only the right to be present, but also the right to receive legal assistance as needed (para. 49 of the “Lagerblom v. Sweden” judgment; para. 89 of the “Galstyan v. Armenia” judgment). In this regard, the absence of a defense attorney on the video indicates a violation of the accused’s right to defense. Therefore, such

an investigative action is illegal, according to Article 87 of the Code of Criminal Procedure of Ukraine, if the right to defense is violated, then the evidence is declared inadmissible; 2) It is noted in the protocol that audio and video control of the person was carried out, but the Supreme Court in its decisions also called the criteria for the inadmissibility of such evidence. That is, if this was carried out by a police officer, then this is an interrogation and cannot be considered as video monitoring of a person. This can be regarded as covert interrogation. 3) Also, an integral part of investigative actions is the order of the investigator to carry them out. If this order is not opened to the defense side, all materials received from such actions are inadmissible. In this case, there is no instruction, therefore, the actions can be recognized by the court as such that they do not comply with procedural norms.

It is not the responsibility of the ECtHR to determine whether certain types of evidence, such as evidence obtained illegally under national law, in principle, be admissible. The question to be answered is whether the trial was fair in general, taking into account, among other things, the way the evidence was obtained. This includes a consideration of the alleged illegality and, where a violation of another Convention law is involved, the nature of the violation found (para. 34 of the “Khan v. The United Kingdom” judgment; para. 76 of the “PG and J. H. v. The United Kingdom” judgment; para. 42 of the “Allan v. the United Kingdom” judgment).

The defendant’s lawyer also stated that Y. Rossoshansky gave false testimony, since there were authorized persons who indicated which evidence to give and which not.

Nevertheless, the prosecution denies the inadmissibility of the evidence, since the accused described in detail all the circumstances that happened on the day of the murder and therefore believes that the testimony is truthful.

The court, taking into account the above circumstances regarding the statement of the accused about the facts of pressure on him, as well as the presence of a video recording with a confession, considers that it is neces-

sary to submit for consideration the question of the petition of the participants in the case to conduct an expert study using a polygraph if the accused agrees to this. The lawyer of Y. Rossoshanskiy pointed out that manipulations with the polygraph had already been carried out twice, but this is not in the case materials, which again violates the right to defense. Despite this, the defendant agreed to once again conduct such a study.

Monitoring of criminal proceedings of Yuri Rossoshanskiy (hearing on October 22, 2020)

On October 22, 2020, a hearing was held in the Shevchenkovsky District Court of Kiev in the case of Yuri Rossoshansky, who is accused of the murder of human rights activist Irina Nozdrovskaya. He is charged with paragraph 4 of part 2 of Art. 115 (premeditated murder committed with particular cruelty) of the Criminal Code of Ukraine.

The consideration of the case stopped at the examination of the evidence. The prosecutor requested that the video be included in the materials along with the protocol of the interrogation of the accused, on the basis of which a forensic psychiatric examination was carried out. But the defender of Y. Rossoshanskiy objected. He believes that the protocol is not a source of evidence. The court must interrogate the accused directly in the courtroom, so as not to create a bias towards the future testimony of his client.

The court concluded that the admission of evidence to the case file was unfounded and all testimony should be heard in court directly.

Further, the panel of judges examined the protocol of the investigative experiment. For technical reasons, the video of the investigative experiment could not be viewed.

The victims, having listened to the protocol under investigation, believe that the testimony of the accused is invented. The position is justified by the fact that many facts describing the area where the crime was committed do not coincide. The victims believe that Y. Rossoshanskiy did not commit the murder alone. They demand a second investigative experiment. They

believed that someone is trying to hide the real killers of their daughter, since the investigative experiment was carried out without them and their lawyers.

The defender of Y. Rossoshanskiy draws attention to the fact that if the video had been examined, all the questions of the prosecution would have disappeared. The video shows that his client did not even guess what the murdered woman was wearing.

Further, the court considered the issue of extending the measure of restraint to the accused. Yuri Rossoshansky has been detained for almost 3 years. For the first time, the Shevchenkivskyi District Court of Kiev, after the transfer of the indictment to the court, extended the accused's detention on October 18, 2018.

According to the prosecutor, the measure of restraint in the form of detention should be continued due to the fact that Yuri Rossoshansky is accused of committing especially grave crime, for which the law provides for a penalty of imprisonment for more than 10 years. The prosecutor states that the risks have not diminished: the accused lives in the same town with the victims' family and can illegally influence them. The prosecutor also drew attention to hostile relations between the accused and the victim, which may lead to the commission of other criminal offenses. In this regard, any other measure of restraint, except for detention, will not help to achieve the goal of criminal proceedings - the execution by the accused of procedural duties and preventing the commission of other criminal offenses.

Y. Rossoshanskiy's lawyer objected to granting the petition.

The ECtHR draws attention to the inadmissibility of prolonged unjustified detention.

The Court reiterates that the question of the reasonableness of the detention of an accused must be assessed in each case in the light of its particularities. The continued detention can only be justified on a case-by-case basis if there is concrete evidence of a genuine claim of public interest which, despite the presumption of innocence, outweighs the rule of respect for personal liberty enshrined in Article 5 of the

Convention (paragraph 110 of the "Kudla v. Poland").

The existence and persistence of reasonable suspicion that the person arrested has committed a crime is a condition *sine qua non* of the lawfulness of further detention. However, after a certain time, this becomes insufficient. In such cases, the Court must establish whether the other grounds adduced by the judicial authorities continued to justify the deprivation of liberty. If such grounds were "relevant" and "sufficient", the Court must also establish whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (paragraph 152 of the "Labita v. Italy" judgment). The validity of any period of detention, no matter how brief, must be convincingly demonstrated by the authorities (paragraph 66 of the "Shishkov v. Bulgaria" judgment). When deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures to ensure his appearance in court (paragraph 83 of the "Jablonski v. Poland" judgment).

The Court has frequently found a violation of Article 5 § 3 of the Convention in cases where the domestic courts extended the applicant's detention based mainly on the gravity of the charges and using stereotypical formulas without considering specific facts or considering alternative measures of restraint (paragraph 55 of the "Pelevin v. the Russian Federation" judgment).

The court has repeatedly pointed out that "... although the severity of a possible sentence is an important component in assessing the risk of escape or committing new offenses on the part of the accused, the need to extend the period of application of a measure of restraint in the form of detention cannot be assessed only from an abstract point of view, taking into account only the gravity of the charges. Continued detention cannot be used to await a verdict either" (paragraph 51 of the judgment in the case "Kolunov v. Russia").

In many cases, the ISHR observers are faced with the fact that representatives of the prosecutor's office do not adequately justify the need to extend the period of detention in their

applications. In most cases, prosecutors do not justify the existence of risks, and the burden of justifying the risks rests entirely with the court.

As a result of considering this case, the court granted the prosecutor's request and extended the measure of restraint in the form of detention for another 60 days.

Monitoring of the case of Yu.V. Rossoshansky (hearing on December 03, 2020)

On December 3, 2020, the Shevchenko District Court of the city of Kiev continued to consider the case of Yuri Rossoshansky, who is accused of the murder of human rights activist Irina Nozdrovskaya. He is charged with Paragraph 4, Part 2, Article 115 of the Criminal Code of Ukraine.

Recall that on January 1, 2018, the body of lawyer Irina Nozdrovskaya was found in a river near Kiev, she disappeared a few days before. On January 8, suspicion of murder was announced to Yuri Rossoshansky, the father of Dmitry Rossoshansky, who in September, 2015 beat Svetlana Sapatinskaya, Nozdrovskaya's sister, to death, and was sentenced to prison for this.

Today, the accused Yu. Rossoshansky faces up to 15 years or life imprisonment.

At this hearing the video of the investigative actions was evaluated.

While watching the video, one can hear that the accused said that he had killed the woman, however, as we know, later (after the investigative actions), at one of the sessions, the accused stated that he gave false testimony due to the fact that he was under pressure from of law enforcement agencies and he does not admit his guilt at this stage.

The defense attorney noted that since during the pre-trial investigation the accused was "promised Article 116 of the Criminal Code (murder in a state of intense emotional excitement)," he invented the circumstances of the crime, hoping that his actions would be qualified in this way. This is confirmed, in his opinion, even by the fact that the possessions of the murdered woman were found in one place,

and the way he returned home was completely different. Also, the prosecutor noticed that the video during the investigative actions shows that the accused could not display the way he returned home after the crime was committed. Even Rossoshansky's description of the belongings of the murdered woman does not coincide with reality. The lawyer also cited a number of proofs that may confirm the invention of circumstances by Yu. Rossoshansky.

In paragraph 108 of the "Ibrahim and others v. United Kingdom" judgment, the ECtHR noted, "... the fact that if the defendant gives false testimony does not in itself prove his guilt. The defendant can lie for many reasons, which may well be innocent in the sense that they do not indicate his guilt. It is assumed here that the false testimony was given for a variety of reasons: out of fear of the accused to admit that he was to some extent involved in the crime or knew about its preparation, but what was said by the defendants is not enough to consider him guilty...". If the court considers that the false testimony given to the relevant defendants has or may have an innocent explanation, it should not take them into account. Only if we are sure that he did not lie for an innocent reason, can this false testimony be considered as evidence confirming the prosecution's version, taking into account other instructions that the ECtHR indicated on the issue of interrogation in the interests of security.

That is, in this case, the reason that Yuri Rossoshansky pointed out the false circumstances of the crime can be assumed to be pressure on him from other persons, as well as a promise to mitigate the punishment. If we draw an analogy with the opinion of the ECtHR in the case "Ibrahim and others v. The United Kingdom", then the video recording can theoretically be declared invalid by the court. When the judge asked whether the circumstances were invented, the accused replied that yes, they were invented for the record.

The victim, in turn, was outraged that during the investigative actions the authorized persons did not even take samples from the crime scene. She claims that Yu. Rossoshans-

sky could not have planned and killed her daughter himself, and this is confirmed by a number of facts. Irina Nozdrovskaya's mother believes that this is a contract-based organized murder. The woman demands to investigate her daughter's Facebook correspondence, because she believes that there is all the information about those who threatened Irina, from which it would be possible to understand who could really have committed the murder or contributed to it.

In addition, at the hearing, questions were clarified about the location of the victim's phone. The prosecutor provided a forensic telecommunications expertise, which was examined by the court at the hearing. Also, the court examined the conclusion of a forensic psychiatric expert, but the defense attorney claims that it has no probative value, because he believes that the described characteristic is suitable for 99% of the population.

At the next hearing, which will be held on December 10, 2020, the court will continue to examine the evidence. The ISHR experts will continue to clarify the details of this case.

3.48 The trial of Evgeny Sagaidak

Monitoring of criminal proceedings of Sagaidak Evgeny Sergeevich (hearings on October 29, 2020)

On October 29, 2020, a hearing in case No. 331/4277/17 was held in the Oktyabrsky District Court of Zaporozhye on charges of Evgeny Sergeevich Sagaidak accused of committing a crime under Part 2 of Art. 187 of the Criminal Code of Ukraine, namely, robbery committed by prior conspiracy by a group of persons or a person who has previously committed robbery or banditry.

The court session was held with the participation of the prosecutor, the accused and his defense counsel. The victims and their representative did not appear at the hearing. Despite this, the parties considered it possible to hold the hearing without them.

The course of the trial: at the beginning of

the trial, the accused filed a complaint about the violation of the trial procedure. He indicated that the trial began 50 minutes later than the scheduled time, despite the fact that the accused had been in a glass box all this time. The judge attached this statement to the case file and suggested that the case be continued.

He indicated that the trial began 50 minutes later than the scheduled time, despite the fact that the accused had been in a glass box all this time. The judge attached this statement to the case file and suggested that the case be continued.

In this court session, a disc with a video recording of the arrest of the accused by the police was examined.

After examining the materials of the case, the court proceeded to decide on the extension of the time limit for the application of the measure of restraint, since the term of detention was about to expire.

The prosecutor petitioned for an extension of the term of detention for two months, while asking to take into account when making a decision the characteristics of the accused, namely, the fact that he had previously been repeatedly prosecuted for mercenary and other grave crimes committed with violence. In addition, the prosecutor expressed her opinion that the aggressive behavior of the accused during and after the arrest indicates his unwillingness to take the path of correction.

The defense, for its part, asked the court to change the measure of restraint from detention to house arrest, arguing that the prosecution did not note any existing risks provided for by the current criminal legislation of Ukraine, which could justify the further detention of the accused.

The accused Sagaidak Y.S., in order to ensure his right to defense and the right to freedom, demanded to get acquainted with the arguments of the prosecution in writing. The accused also stated that the court was violating his rights by considering the prosecutor's petition to extend the period of detention ten days before the expiration of the previous detention order, referring to the Law of Ukraine

“On Amending Clause 20-5 of Section XI” Transitional Provisions “of the Criminal Procedure Code of Ukraine regarding the peculiarities of judicial control over the observance of the rights, freedoms and interests of persons in criminal proceedings and the consideration of certain issues in the course of judicial proceedings for the period of quarantine established by the Cabinet of Ministers of Ukraine in order to prevent the spread of coronavirus disease (COVID-19)” dated April 13, 2020, where it is noted that “during the pre-trial investigation and during the trial, an application for an extension of the period of detention shall be filed no later than ten days before the expiration of the previous detention order”. Thus, according to Y.S. Sagaydak, the court assumes the responsibilities of the prosecution, once again independently initiating the issue of extending the term of detention.

In addition, the accused emphasized that according to the Information Letter of the High Specialized Court of Ukraine for the Consideration of Civil and Criminal Cases on some issues of the procedure for the application of measures during pre-trial investigation and judicial proceedings in accordance with the Criminal Procedure Code of Ukraine dated April 04, 2013 No. 511-550 / 0 / 4-13, the investigating judge must carefully check the compliance of the submitted petition of the investigator, the prosecutor on the application of a measure of restraint to the requirements of Art. 184 of the Code of Criminal Procedure, as well as the timeliness of providing the suspect, the accused with a copy of the petition and materials that justify the need to apply a measure of restraint (no later than three hours before the start of the consideration of the petition). In case of non-compliance by the investigator, the prosecutor with the requirements of Art. 184 of the Code of Criminal Procedure, the judge considers the relevant petition and refuses to satisfy it.

The European Court of Human Rights (hereinafter - the ECtHR) notes in such cases that the national authorities are obliged to establish the existence of specific facts that may be grounds for further detention. Placing the

burden of proof on a prisoner in such matters amounts to a violation of Article 5 of the Convention. The situation in which there is a derogation from the right to liberty in favor of detention is permissible only with an exhaustive list of facts and strictly defined cases. (§§ 84-85 of “Iliikov v. Bulgaria” case).

In § 41 of the case “Khayredinov v. Ukraine”, the ECtHR notes that in the present case the domestic courts justified the applicant’s continued detention mainly on the basis of the gravity of the charges against him. In rejecting his applications for release and in extending his detention without reference to any specific facts, they considered that this was the only reason sufficient to conclude that he might abscond or otherwise disrupt the course of the investigation. As regards the applicant’s detention pending trial, the only thing the court referred to was that the measure of restraint must be considered justified without considering its justification over time and taking into account the progress in the proceedings. The Court does not consider these grounds for the applicant’s continued detention “relevant and sufficient”.

It must be added that the validity of any period of detention, regardless of its length, must be convincingly demonstrated by the authorities (§ 66 of “Shishkov v. Bulgaria” case).

Thus, from the point of view of the ECtHR, detention under Article 5 § 1 (c) must satisfy the requirement of proportionality (§ 55 of “Ladent v. Poland” case).

The court, having consulted, decided to extend the term of detention of the accused Sagaidak E.S.

The issue of automatic prolongation of detention and the lack of proper reasoning for the existence of risks is often raised by ISHR observers in their reports. In many cases, observers are faced with the fact that prosecutors do not justify the existence of risks and the burden of making a decision rests entirely with the court. Thus, the prosecutor’s office does not perform its functions properly, which may lead to a violation of the rights of the accused under Art. 5 of the Convention. As, for example, in the case of R.A. Dubinevich (hearing

of 05.12.2020) and V.I. Tyapkin (hearing of 04.01.2020).

Monitoring of criminal proceedings of Evgeny Sergeevich Sagaidak (hearing on December 08, 2020)

On October 29, 2020, a hearing in case No. 331/4277/17 was held in the Oktyabrskiy District Court of Zaporozhye on the charges of E.S. Sagaidak in the commission of a crime under Part 2 of Art. 187 of the Criminal Code of Ukraine, namely, robbery committed by prior conspiracy by a group of persons or a person who has previously committed robbery or banditry.

The International Society for Human Rights has already monitored this case on October 29, 2020.

At the hearing on December 8, 2020, the investigation of the disc with the video recording of the arrest of the accused by the police authorities continued.

Defendant E.S. Sagaidak and his lawyer drew the attention of the judges that during his arrest he was not provided with a lawyer. The accused insisted on the need to provide him with legal assistance, but the representatives of the police did not provide a defense lawyer.

Paragraph 1 of Article 6 of the ECtHR generally requires access to a defense lawyer from the first interrogation of a suspect by law enforcement officials, unless it has been demonstrated in the specific circumstances of the case that there are compelling reasons to restrict such a right. Even if compelling reasons may in exceptional cases justify denying access to a lawyer, such a restriction, regardless of the reasons, must not unreasonably violate the rights of the accused under Article 6 of the Convention.

The ECtHR must assess the existence of compelling grounds for restricting access to a defense lawyer. Next, it must assess the amount of damage that was caused to the right to defense in the case of the relevant restrictions. If compelling reasons are established, a comprehensive assessment of the proceedings should be carried out to determine

whether they were “fair” in accordance with the purposes of Paragraph 1 of Article 6 of the Convention (“Ibrahim and Others v. The United Kingdom”, para. 264).

During a comprehensive study of proceedings in order to assess the impact of procedural deficiencies on the fairness of criminal proceedings in general, it is necessary to take into account such an inexhaustible list of criteria in the practice of the ECtHR: (a) whether the applicant was in a particularly vulnerable position; (b) the regulations governing the pre-trial investigation procedure and the admissibility of evidence during their assessment, as well as their observance; (c) whether the applicant had the opportunity to challenge the admissibility of the evidence or challenge its use; (d) the quality of the evidence, whether the circumstances in which it was obtained have raised doubts about its reliability and accuracy, taking into account the extent and nature of any duress; (e) if the evidence was obtained unlawfully, the relevant unlawfulness, and if it was caused by a violation of another article of the Convention, the nature of the violation found; (f) in the case of testimony, the essence of the testimony and whether the applicant retracted it or changed it in a short period of time; (g) the way in which the evidence was used, as well as, in particular, whether the evidence became an integral or significant part of the evidence base on which the conviction was based, as well as hundreds of other evidence in the case; (h) whether guilt was found to be guilty by professional judges or jurors, and in the latter case, the content of any attitudes to the jury; (i) the degree of public interest in investigating and punishing a particular offense; (j) other relevant procedural safeguards provided for in national law and ECtHR practice (“Ibrahim and Others v. the United Kingdom”, para. 274).

On the basis of previous arguments, the defense asked the domestic court to declare the arrest record as inadmissible evidence, since the procedural action was carried out without a defense counsel.

The judge refused to satisfy the defense’s petition and indicated in the court decision

that the current legislation does not require stopping the investigative action - in case of a search of the person - before the defense lawyer arrives at the place of detention, but only indicates the need to ensure confidential communication between the defense lawyer and the suspect before interrogation, which was done properly by the investigator. The absence in the protocol of the person's detention of a written reference to the message of the legal aid center about the detention of a person does not indicate a violation of the right to defense, since the requirements of Art. 213 of the Criminal Procedure Code of Ukraine were actually fulfilled by the investigators, which was verified by the court during the court session. However, the domestic court noted that the issue of the invalidity of the evidence would be decided upon assessing the remaining evidence at the time of the final decision in the criminal proceedings.

The International Society for Human Rights draws attention to the lack of a unified practice in the issue of invalidating the detention protocol. Thus, in case no. 645/1774/17, during the arrest and search, the suspect was not properly provided with a defense lawyer, while from the beginning of the detention she insisted on this, she did not refuse the participation of a defense lawyer. The conduct of the procedural action was not postponed by the investigator until the arrival of the defense counsel chosen by the accused or until the arrival of the involved defense lawyer from the free legal aid agency. Procedural rights do not require a suspect to actively resist law enforcement officials in their intentions to conduct procedural actions, in this case a search of a detainee, without a final decision on her petition to have a lawyer. Neglecting the request for a lawyer on the part of the suspect, a search was conducted, the results of which the suspect also did not confirm with her own signature. On the proposal to sign the protocol, the suspect drew attention to the absence of a lawyer and refused to participate in the procedural action without him. In case No. 645/1774/17 on November 7, 2019, the Frunzensky District Court of Kharkov declared the detention report invalid.

Thus, the national courts have yet to develop a unified approach to resolving the issue of invalidating the detention report, which was drawn up without the participation of a lawyer.

Then the participants in the court session proceeded to the study of written evidence. The defense attorney asked the court to re-conduct the portrait examination. However, the court rejected this request.

Also, at the hearing, the petition of the accused and the lawyer to change the measure of restraint from detention to house arrest was considered. E.S. Sagaidak argued it as follows: - he is in custody for a long time (more than 3 years); - none of the risks, to hide from the court or obstruct the court proceedings, are justified; - he has no intention to continue criminal activity.

Checking for the risks under Art. 177 of the Criminal Procedure Code of Ukraine, the national court notes that due to the lack of data on the employment of E.S. Sagaydak before his imprisonment, drawing attention to the presence of two episodes of criminal acts, a selfish motive for the crime, and also taking into account the two convictions of the accused, there is a likelihood of continued criminal activity. According to the court, this risk is significant and such that it prevails over a person's right to personal freedom.

Without questioning the decision of the national court, the International Society for Human Rights draws attention to the fact that the justification for the need to extend the period of detention remains unchanged in the court's decision.

It should be noted that the ECtHR has often found a violation of paragraph 3 of Art. 5 of the Convention in cases where domestic courts continued detention, referring mainly to the gravity of the charges and using formulaic language, without even considering specific facts or the possibility of applying alternative measures ("Kharchenko v. Ukraine", paras. 80-81; "Tretyakov v. Ukraine", para. 59).

3.49 The trial of Sergey Sergeyev and others

Monitoring the case of Sergeyev and others (Sessions on January 28, 2020 and February 3, 2020)

On January 28, 2020, a session was held in the Kommunarsky District Court of Zaporozhye on the case of drivers from Makeevka Sergey Sergeyev and Andrey Gorban, as well as three employees of the Zaporizhzhya Social Security Administration - Victoria Voloshina, Anna Khokhotva and Yulia Semenyuk, accused of committing crimes under Part 1 of Article 255 of the Criminal Code of Ukraine (creation of a criminal organization), Part 5 of Article 191 (misappropriation, embezzlement of property on an especially large scale or the seizure of it by abuse of official position by prior conspiracy by an organized group of persons), Part 2, 4 of Article 28 (commission of a crime by an organized group or criminal organization by prior conspiracy), Part 1 of Article 366 (official forgery), Part 1 of Article 258-3 (other assistance to the creation or activities of a terrorist group or terrorist organization), Part 2, 3 of Article 258-5 (financing of terrorism repeatedly or from selfish motives, or by prior conspiracy by a group of persons, or on an especially large scale).

Experts from the International Society for Human Rights (ISHR) monitor these lawsuits.

According to the defense, these accusations (which may lead to up to 15 years in prison) of the defendants are for the fact that the drivers arranged for the transportation of pensioners from uncontrolled part of the Eastern Ukraine to receive pensions, and the social service employees applied for these pensions. According to lawyers, such cases are being opened with the aim of reducing social payments to Ukrainian citizens living in uncontrolled territories. Criminal proceedings last more than two years.

The victim in the case is the Pension Fund, a representative of which was present and was questioned at this hearing. Among other things, he indicated that the amount of the claim was not considered by the Pension Fund

- it was indicated to them by the Secret Service (SBU). During the interrogation of witnesses, no one testified against the accused. At the moment, all the materials of the case have been studied and all witnesses have been interrogated, it remains to investigate the latest material evidence - the buses belonging to drivers, which have been parked at the SBU compound for 3 years now. The prosecutor ignored two decisions of the court on the delivery of vehicles to the court.

The court considered the question of the technical feasibility of delivering vehicles to the court, since the letter of the colonel of the SBU indicated that there was no technical feasibility of delivering the vehicles to court and asked them to be examined on the territory of the SBU. Attorney Shostak A. in her objections noted that no documents confirming a technical malfunction were included in the SBU letter - expert examinations or any other. The SBU is responsible for the safety of the material evidence, but it is the prosecutor who must comply with the court order, that is, ensure that everyone attends the retreat that he is applying for. And for failure to comply with a court decision criminal liability is provided in accordance with Article 382 of the Criminal Code of Ukraine. The court noted that the prosecutor ignored twice and did not comply with the court decision on the obligation to ensure the delivery of physical evidence (two vehicles).

In addition, the lawyer Zelinskaya O. clearly listed examples of material evidence, for the study of which the court appoints a retreat, such as a building, a ship, military equipment at a military base, specifying that vehicles are not included in this list.

After a discussion in the deliberation room, the court decided for the third time to deliver the vehicles to a hearing.

During the interrogation of the accused, the deputy head of the social protection department - the head of the labor department A. Khothotova explained that she was accused of putting signatures on certificates to people who were not registered in the territory controlled by Ukraine and that the money went

to terrorists. However, during the indicated period, she was on vacation (from June 1, 2016 to June 20, 2016) and noted that all the originals of the certificates were from people who are now in Donetsk and it is not known who is the signer of these certificates. She also noted that she was accused of illegally putting the stamp “indefinitely” on the certificates of immigrants, but from 08.06.2016, in accordance with new legislation, all certificates of internally displaced persons automatically became unlimited. She answered the questions of the prosecutor that she saw the drivers accused of this lawsuit and they helped internally displaced persons, it was easier to work with them, as volunteers helped turn the crowd into an organized queue. They never applied for signatures of any certificates, and their names were recognized only in this lawsuit. To the questions of the lawyer O. Zelinskaya, does the immigrant certificate give the right to receive a pension right away, she noted that it is necessary to go to a pension fund first. It is impossible to receive a pension automatically by reference, and that it must issue a certificate, even if the person did not present a document on the actual place of residence in Zaporozhye. The place of residence is indicated according to the person and is sufficient. The accused also noted that for some of the people indicated in the lawsuit, pensions are paid after the lawsuit has been filed, and even after the detention of Sergeyev and Gorban. And one woman received it six months ago

At the hearing on February 3, 2020, the accused Yulia Semenyuk was questioned, who confirmed that she did not plead guilty in full and the court again raised the issue of the delivery of material evidence by the prosecution. The lawyers of the accused said that if the prosecutor does not provide the delivery of material evidence of the two vehicles as an obligation to fulfill the court decision, they will have to contact the state bureau of investigations with the aim of initiating a criminal case due to the prosecutor’s unwillingness to comply with the court decision.

Monitoring the case of Sergey Sergeyev and others (Session on February 17, 2020)

On February 17, 2020, in the Kommunarsky court of Zaporozhye, a session was held on the case of Makeevka drivers Sergey Sergeyev and Andrey Gorban, as well as three employees of the Zaporozhzhya Social Security Administration: Victoria Voloshina, Anna Khokhotva and Yulia Semenyuk, accused of committing crimes under Part 1 of Art. 255 of the Criminal Code of Ukraine (creation of a criminal organization), Part 5, Art. 191 (appropriation, embezzlement of property on an especially large scale or seizure by abuse of official position by prior conspiracy by an organized group of persons) Part 2, Article 4 28 (commission of a crime by an organized group or criminal organization by prior conspiracy), part 1 of article 366 (official forgery), part 1 of article 258-3 (other assistance to the creation or activities of a terrorist group or terrorist organization), Part 2, 3 of Article 258-5 (financing of terrorism repeatedly or from selfish motives, or by prior conspiracy by a group of persons, or on an especially large scale).

The Pension Fund undergoes as the victim in the case, although pensioners themselves, whose funds were allegedly illegally transferred to terrorists, did not file lawsuits.

Over the past hearings, the court ruled three times on the delivery to the hearing of arrested vehicles of drivers. Two times the prosecutor’s office ignored the court’s decision. This time the cars were delivered by the accused in the presence of responsible persons from the Ukrainian secret service (SBU). The board of the court examined the cars in the parking lot in front of the courthouse, and then in the courtroom heard the accused S. Sergeyev and A. Gorban.

Andrei Gorban said that a new battery, a set of keys, a fire extinguisher, a first-aid kit, a tow rope, and caps from disks disappeared from his car. Also, according to him, a new winter tire was removed, and the old summer one was replaced instead. In addition, on the way to the court, the front wheel nearly fell off. Sheathing is torn from the car, plastic near the windshield, there is a dent on the body near

the bottom. According to Gorban, the car was serviced 5 days before the arrest and was in excellent technical condition.

Sergey Sergeev also indicated that the new winter tires and battery from his car disappeared. In addition, cracks appeared on the windshield, a dent in the rear, the taillight was broken, the interior trim was torn out, and the seats were cut. In addition, the spare glasses stored in the glove compartment were lost.

The officer of the SBU responsible for storing material evidence said that the cars stored in the parking lot of the SBU for 3 years were transferred to him only 1.5 years ago and without an inventory.

During the session, it turned out that according to the data sheet and in fact, there were 7 seats (8 with a driver) in Sergeyev and Gorban's cars, while the indictment states that each of the drivers transported more than 10 pensioners.

Lawyer Antonina Shostak filed a motion to remove the arrest regarding the ban on the use of cars and said that a technical examination would be carried out in order to hold accountable those responsible for the improper preservation of material evidence.

The court decided to consider the motion at the next hearing and adjourned the hearing to April 9, 2020.

The International Society for Human Rights expresses concern about allegations of damage and loss of property (of the accused) held in custody at the SBU, which falls under Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which states:

“Every individual or legal body has the right to respect for his property. No one may be deprived of his property except in the public interest and under the conditions provided for by law and the general principles of international law.”

In addition, part 2 of article 100 of the Code of Criminal Procedure of Ukraine states that “the party of the criminal proceedings who have been provided with evidence or a document is required to keep them in a condition suitable for use in criminal proceedings”. Part

4 of the same article assumes that “in the event of a loss or destruction by a party to criminal proceedings of the material evidence provided to him, he is obliged to return the same thing to the owner or to reimburse its cost.” According to Article 194 of the Criminal Code of Ukraine, intentional destruction or damage to property is punishable by a fine of up to fifty tax-free minimum incomes of citizens or correctional labor for a term of up to two years, or imprisonment for a term of up to three years.

In paragraph 50 of the Decision of the ECtHR in the case of “LLC Gastronom v. Russia”, dated March 19, 2019, the European Court notes that law enforcement and judicial authorities are required to take reasonable measures to store material evidence, and national law should provide for the possibility of bringing an action against the state to recover damage due to improper storage of the seized property. Moreover, the procedure for filing such claims must be effective so that the owner can really protect his rights.

Monitoring of the case of Sergei Sergeev and others (hearing on July 13, 2020)

On July 13, 2020, in the Kommunariskiy District Court of Zaporozhye, a hearing was held on the case of the Makeyevka drivers Sergey Sergeev and Andrey Gorban, as well as three employees of the Zaporozhye Social Security Department - Victoria Voloshina, Anna Khokhotva and Yulia Semenyuk, accused of committing crimes under Part 1 of Art. 255 of the Criminal Code of Ukraine (creation of a criminal organization), Part 5 of Art. 191 (appropriation, embezzlement of property on an especially large scale or taking possession of it by abuse of office by prior conspiracy by an organized group of persons), Part 2; 4 of Art. 28 (commission of a crime by an organized group or a criminal organization by prior conspiracy), Part 1 of Art. 366 (official forgery), part 1 of Art. 258-3 (other assistance to the creation or activities of a terrorist group or terrorist organization), part 2: 3 of Art. 258-5 (repeated financing of terrorism or out of selfish motives, or by prior conspiracy by a group of persons, or on an especially large scale).

Recall that, according to the defense, these articles, which imply up to 15 years in prison, are charged to the defendants for the fact that the drivers organized the transportation of pensioners from uncontrolled regions of eastern Ukraine (ORDLO) for registration of pensions, and the social service employees issued these pensions. According to lawyers, such cases are opened with the aim of reducing social benefits to citizens of Ukraine living in the uncontrolled territories.

The criminal proceedings lasts two and a half years.

The victim in the case is the Pension Fund, its representative was not present at the hearing.

Translator of S. Sergeev, who usually participates in the hearings because the defendant don't speak Ukrainian language, did not appear at the hearing. In order to respect the rights of the accused, the lawyer filed a motion to postpone the hearing. The court heard the opinion of the parties present on whether this was a reason to postpone the hearing, to which the accused and their lawyers replied that the absence of an interpreter was not a reason for postponing the criminal proceedings. The panel of judges made a decision at this hearing to proceed to the consideration of the case in essence without an interpreter.

In the course of these proceedings, the court ordered the prosecutor to ensure control over the appearance of the interpreter at the next hearing, which is scheduled for October 5, 2020, since the interrogation of the accused Sergeev is scheduled for that date.

The trial is coming to an end and debates and a court decision are tentatively scheduled for October 6, 2020. One accused A. Gorban was questioned at the hearing.

The prosecution did not provide evidence that the defendants took possession of the pensioners' money. There was only a check for 810.00 rubles, according to Gorban, this is a mandatory payment to the DPR fund, which the military forced him to make at the checkpoint, providing the bank details.

During interrogation, the defendant denied any involvement in facilitating the creation

or activities of a terrorist group or terrorist organization. He confirmed that he was familiar with the driver Sergeev, but they never planned joint trips or other events. The presence of bank cards and other photocopies of pensioners' documents was explained by the fact that elderly and sick people, in order not to waste money and time on travel and stay in hotels in Zaporozhye, asked to transfer the missing documents for registration of a pension, receive a pension or purchase medications. Gorban did not take any rewards for opening accounts and did not deal with registration of pensions. He said that after his arrest and interrogation of him and the pensioners whom he had brought to the city of Zaporozhye by the Ukrainian Secret Service officers, his wife paid for a new transport, which took the people and took them back to the Donetsk region.

Let us recall that this trial has been dragging on for the third year, which may run counter to the principle of considering a case within a reasonable time and the norms of the European Convention on Human Rights and Fundamental Freedoms.

Paragraph 116 of the ECtHR judgment of 03.12.2009 in the case "Vergelsky v. Ukraine" states: "The reasonableness of the length of the proceedings must be assessed in the light of the specific circumstances of the case and taking into account such criteria as the complexity of the case, the conduct of the applicant and the relevant authorities (see, in particular, paragraph 67 of the judgment in the case of "Pelissier and Sassi v. France").

3.50 The trial of Shapoval

Monitoring the case of Shapoval N.P. (hearing 04/27/2020)

On April 27, 2020, a hearing was held in the Artyomovsky City Court of Donetsk Region on charges of Shapoval N.P. of committing a crime under subsection 1.4 of Part 2 of Article 1115 of the Criminal Code of Ukraine.

During the trial, the prosecutor filed a request for an extension of the measure of restraint in the form of detention, since the risks

foreseen in paragraphs 1,3,5 h. 1 art. 177 of the Code of Criminal Procedure of Ukraine (2012), the defendant can hide from the court, put pressure on the victims, witnesses, or commit a new crime.

The defense counsel requested that the prosecutor's petition be denied because "... it is not substantiated, the petition does not indicate evidence that confirms the risks, there is no evidence of the defendant's guilt, the punishment is life imprisonment, it is not a risk, it cannot be said that the defendant was repeatedly convicted, previously he was convicted only once, the verdict in this case has not been decided, and after a week the defendant has been detained for 10 years, and according to the 'Savchenko law' it is 20 years, and after serving 20 years of punishment there are grounds for applying for pardon."

In addition, the accused himself asked to choose a measure of restraint in the form of house arrest, since the prison administration creates improper conditions for him in detention, he was bitten by bugs, he was forced to refuse food provided by the administration, since it was not proper quality, in addition, water flows from the ceiling, clothes do not dry out in 3 days. He asked to be transferred to another room, but he was refused. The accused believes that such conditions of detention are a direct threat to his life. He will not influence witnesses and will not hide from the court. He is physically unable to be detained in such conditions.

As a result of the review, the court granted the request of the prosecutor.

Representatives of the ISHR are concerned about the timelines for the consideration of this case, the lack of adequate justification for the risks that form the basis of the decision to extend the terms of detention, as well as the conditions of detention of the accused.

Article 6 of the Convention recognizes the right of every person prosecuted in a criminal case to receive a final decision within a reasonable time on the validity of the charges against him, or rather, to ensure that the accused do not remain for a long time under the weight of the charge and that a decision is made on the

validity the charges ("Vemkhov v. Germany", para. 18; "Julia Manzoni v. Italy", para. 25; "Brogan and others v. the United Kingdom", para. 65).

Having studied the history of court decisions in the case, it can be established that in 2020, court hearings exclusively considered issues of extending measures of restraint.

According to paragraph 3 of Article 5 of the Convention after a certain period of time, just the existence of reasonable suspicion that does not justify the deprivation of liberty, and the courts should give other reasons for the extension of detention ("Borisenko v. Ukraine", para. 50). Moreover, these grounds must be clearly indicated by the national courts ("Eloev v. Ukraine" para. 60, "Kharchenko v. Ukraine" para. 80).

The court often found a violation of paragraph 3 of Article 5 of the Convention in cases where the national courts continued detention, referring mainly to the gravity of the charges and using template language, without even considering specific facts or the possibility of alternative measures ("Kharchenko v. Ukraine", paras. 80-81; "Tretyakov v. Ukraine" para. 59).

The existence of a reasonable suspicion of a crime committed by a detained person is an indispensable condition for the legality of his continued detention, but after the lapse of time such a suspicion will not be sufficient to justify prolonged detention. The court never attempted to translate this concept into a clearly defined number of days, weeks, months or years, or at different times depending on the gravity of the crime. Once "smart suspicion" is no longer sufficient, the court must establish that the other grounds given by the courts continue to justify the person's deprivation of liberty ("Maggie and Others v. The United Kingdom", paras. 88-89).

The accused is previously convicted, and the crime attributed to him is characterized by special severity. However, even in cases of such complexity, the extension of the terms of detention should be well-reasoned. And this requirement is, first of all, established for the Prosecutor's Office. Representatives of the ISHR have repeatedly emphasized that the "burden"

of argumentation for extending the measure of restraint rests with the court, while prosecutors use template language, without reference to specific facts, confirming the risks, counting on an automatic extension.

And even if the periods of detention continue, the European Court of Human Rights has repeatedly emphasized that the state must ensure that a person is detained in conditions that are consistent with the principle of respect for their human dignity, and that the method and restrictions of freedom do not cause him mental suffering or difficulties that exceeded the inevitable level of suffering inherent in detention and that, in accordance with the practical requirements of imprisonment, health care was properly ensured (“Kudla v. Poland,” paras. 92-94).

Thus, in a case randomly selected in the list of broadcasts of court hearings, so many negative trends are concentrated. Representatives of the ISHR will continue to monitor the case through broadcasts. The next hearing is scheduled for May 25, 2020.

3.51 The trial of Alexander Shchegolev

Monitoring of the case of Alexander Shchegolev (court hearing 23 June 2020)

On June 23, 2020, a regular hearing in the case of Alexander Shchegolev was held in the Shevchenkivsky District Court of Kiev.

Alexander Shchegolev is accused of organizing the violent dispersal of peaceful protests on February 18-19, 2014. For a long time, the ex-head of the Secret service (SBU) of Kiev and the region was in custody, but on June 26, 2019, the court released him under round-the-clock house arrest and ordered him to wear an electronic bracelet, later the measure of restraint was changed to a personal obligation.

On June 28, 2020, the lines of the measure of restraint of the accused - a personal obligation expire, therefore, on June 17, 2020, the prosecutor sent a petition to the court to resolve the issue of changing the measure of restraint from a personal obligation to a 24-hour house

arrest using an electronic control device.

The prosecutor believes that the measure of restraint must be changed in order to ensure that the accused fulfills his duties, and also points to the existence of risks that have already been declared earlier and continue to exist at the moment, namely: - the possibility of the accused to hide from the court; - the ability to destroy, hide any of the things or documents that are essential for establishing the circumstances of the case; - the risk of illegal influence on witnesses and victims, also experts, etc.; - other actions that may be committed by the accused to obstruct the consideration of the case.

According to the prosecution, these risks are not diminishing, but on the contrary. Also, the prosecutor drew attention to the fact that the accomplices of the crimes incriminated to the accused Shchegolev - the first deputy head of the SBU Totsky and the head of the SBU Yakimenko for this time have chosen a measure of restraint in the form of detention, which also indicates an increase in risks, since these persons can assist the accused in an attempt to escape from the court. During the monitoring of this case, the experts of the ISHR have repeatedly noted that throughout the entire trial, the list of risks in the prosecutor’s applications does not change.

The representative of the victims also asked to grant the prosecutor’s request because he believes that there may be threats to the victims or their relatives, and there is also a risk of changing the testimony of witnesses due to the influence of the accused.

At the beginning of the hearing, Shchegolev’s defender noted that a copy of the petition was not sent to the accused, and this is already a direct violation of the procedural legislation of Ukraine. And, therefore, there is a reason to refuse to satisfy the prosecutor’s petition.

The lawyer draws attention to the fact that Article 200 of the Code of Criminal Procedure of Ukraine stipulates that the petition must necessarily indicate the circumstances that: - arose after the previous decision to apply a measure of restraint; - existed at the time of

the previous decision on the application of a measure of restraint, but about which the investigator, the prosecutor at that time did not know and could not know. But there are no such circumstances, and this is the second reason to refuse to grant the petition. Thirdly, materials that confirm these circumstances must be added to the application, but they are not there either.

The defense attorney noted that the prosecutor had already several times asked the court to change the measure of restraint, despite the fact that the accused fulfills his obligations. Also, he is against any electronic means of control, because their absence in no way causes violations of A. Shchegolev's duties or the occurrence of risks.

Based on the above, given the circumstances of the case and the positive procedural behavior of the accused, the court continued the measure of restraint in the form of a personal obligation for 60 days until 08.21.2020.

Also, earlier, the experts of the ISHR often drew attention to the fact that in this case the principle of reasonable time is violated, because the trial has been going on for more than five years. The case law of the ECtHR suggests that the reasonableness of the length of the proceedings is determined taking into account the circumstances of the case, which require an assessment in the aggregate (para. 36 of the judgment "Boddaert v. Belgium"). Of course, if certain stages of the proceedings are carried out at an acceptable speed, the total duration of the proceedings may nevertheless exceed a "reasonable time" (para. 44 of the "Dobbertin v. France" judgment).

However, Article 6 of the Convention requires that judicial proceedings be expeditious. A fair balance must be struck between the various aspects of this fundamental requirement (para. 39 of the "Boddaert v. Belgium" judgment).

Monitoring of the case of Alexander Shchegolev (hearing on 08.18.20)

On August 18, 2020, a regular hearing was held in the Shevchenko District Court of Kiev in the case of the ex-head of the Security Ser-

vice of Ukraine (SBU) of Kiev and the region, Alexander Shchegolev.

He is accused of organizing the violent dispersal of peaceful protests on February 18-19, 2014. For a long time Shchegolev was in custody, but on June 26, 2019, the court released him under round-the-clock house arrest and ordered him to wear an electronic bracelet, later the measure of restraint was changed to a personal obligation.

This session began with the fact that the defense lawyer challenged the prosecutor A.A. Suprun. He claims that the appointed prosecutor, in prior agreement with one of the officers of the General Prosecutor's Office, creates obstacles in the defense of the interests of the accused by the lawyer, namely, in terms of receiving information constituting state secrets. The defense lawyer says that for almost a year he has been unable to obtain information in order to familiarize himself with the documents that prove A. Schegolev's innocence. In his words, he received permission to obtain state secrets from the authorized bodies. Referring to this, the defense has doubts about the impartiality of the prosecutor.

According to the prosecutor, the application for his challenge is unfounded, explaining that the admission to state secrets does not fall within his competence. The victim's defender also objected to the challenge.

The court rejected the request. On August 21, 2020, the term of the measure of restraint (a personal obligation) for Alexander Shchegolev expired, therefore, at this hearing, the prosecutor's petition to change the measure of restraint from a personal obligation to a round-the-clock house arrest using an electronic control device was considered.

Prosecutor A.A. Suprun substantiated the petition by the fact that, in his opinion, the previously declared risks are not diminishing, just the opposite, namely: - the risk of escaping from the court; - the risk of destruction of any of the documents that are essential for criminal proceedings; - the risk of illegal influence on victims, witnesses or other participants in criminal proceedings; - obstruction of criminal proceedings in any other way.

The prosecutor referred to the fact that on February 19-20, 2014, Alexander Shchegolev destroyed a number of documents. Also, he drew the attention of the court to the fact that the accused committed the alleged crimes in complicity with other heads of state and law enforcement agencies. During March - July 2020, a measure of restraint in the form of detention was applied to the persons whom the prosecutor designated as accomplices. The prosecution stated that it is precisely the measure of restraint in the form of round-the-clock house arrest with the use of an electronic means of control for a period of 60 days that will help to avoid any risks.

The defendant's lawyer objected to the petition, since he did not see in the prosecutor's petition a justification for toughening the measure of restraint. In the period from June 23 to August 18, there were no hearings and the evidence was not considered, all the obligations of the accused were fulfilled, so the lawyer sees no reason to change the measure of restraint. V. Rybin also claims that significant risks are needed to change the measure of restraint, which must be supported by evidence, but the prosecutor did not provide them.

In one of the decisions, the ECtHR says that during the investigation national courts have consistently relied on the severity of the accusations as the main factor in assessing the potential applicants to hide. They did not provide specific facts in support for such conclusions (para. 58 of the judgment "Zentsov v. Russia"; para. 50 of the judgment "Kolunov v. Russia").

The current law enforcement practice in Ukraine has shown that the subjects of law enforcement do not always correctly understand the legal nature of house arrest, regarding this type of measure of restraint as not related to imprisonment, respectively, without extending to such cases the guarantees provided for in Article 5 of the Convention.

Article 5 of the Convention guarantees everyone the right to liberty and security of person. No one can be deprived of liberty except in the cases and in the manner prescribed by law. The list of grounds for imprisonment is given

in para.1 of Article 5 of the Convention, and any deprivation of liberty will not be lawful if it does not comply with one of these grounds (para. 60 of "Austin and Others v. The United Kingdom").

The European Court in its case law has pointed out that before demanding house arrest of a person, it is necessary to study the real situation and take into account a number of factors, such as the type, duration, consequences and method of implementation of the corresponding measure (para. 46 of the judgment "Osipenko v. Ukraine"; para. 44 of the "Dacosta Silva v. Spain" judgment).

In this proceeding, the prosecutor has repeatedly petitioned to change the measure of restraint to house arrest, explaining this only by risks, but not taking into account many other factors.

After consulting, the court decided to refuse to satisfy the prosecutor's petition and continue the measure of restraint in the form of a personal obligation for another 60 days, that is, until October 16, 2020.

Monitoring of the case of Alexander Shchegolev (hearing of September 18, 2020)

On September 18, the Shevchenko District Court continued to consider the case of Alexander Shchegolev, who is accused of organizing the violent dispersal of "Maidan" protests on February 18-19, 2014.

Recall that A. Shchegolev was in custody for three years, but on June 26, 2019, the court released him under round-the-clock house arrest and ordered him to wear an electronic bracelet, later the measure of restraint was changed to a personal obligation.

At the beginning of the court session, a number of motions were submitted from the prosecutor Suprun, as well as from the victim Plekhanova and from the representative of other victims Zakrevskaya - to change the procedure for examining evidence (a combined procedure was proposed) and one more from the representative of Zakrevskaya - to ensure reasonable time limits for the consideration of criminal proceedings.

The prosecutor explained his request by the fact that for a long time the materials of this criminal proceeding have been studied at the sessions, but due to a number of circumstances the victims are not able to come to court and give testimony. He also drew attention to the fact that at this time only 47 of 136 victims have been questioned, in addition, a large number of witnesses (619) have been declared, who also need to be interrogated, and since they all live in different parts of Ukraine and abroad, to call them the court takes time, and it is also necessary to ensure interrogation in other courts in the mode of videoconference. Therefore, in order to ensure a reasonable time frame, promptly resolve issues of criminal proceedings, as well as to plan further court hearings, the prosecutor proposed to change the procedure for examining evidence and insisted on interrogating the victims via videoconference. The victim's defender Zakrevskaya supported the prosecutor's motion.

The ECtHR points out that equality of arms is an integral part of a fair trial. This principle requires each party to be given a reasonable opportunity to present its case in such circumstances as does not place it at a material disadvantage with respect to the opposing party ("Fouche v. France", § 34; "Bobek v. Poland", § 56; "Klimentiev v. Russia", § 95). After all, it is worth noting that the legislation of Ukraine is not limited to the fact that testimony is possible only at that time and in the court where the sessions are held, the prosecutor proposed options for interrogation by videoconference in the premises of the courts of the location of the victims.

Shchegolev's lawyer objected to the prosecutor's petition, supporting only part of the interrogation of the victims, but emphasized that it was their duty to appear at the hearing and give evidence. He proposed to complete the order that had already been chosen, because written evidence, documents, video recordings had already been examined, and further examination of material evidence should be carried out and then - the interrogation of witnesses.

The court expressed its dissatisfaction with the fact that the victims, notified of the le-

gal proceedings, were not present during the examination of the evidence.

Also, the judge emphasized that if it were not for the constant petitions of the parties, the proceedings could move much faster. But the practice of the ECtHR notes that the government should not justify the protracted proceedings by referring to appeals, motions, requests and other procedural actions of the applicant himself, unless they are of the nature of abuse. The defendant cannot be blamed for taking full advantage of the resources and tools provided to him by national law in order to protect his interests ("Kolomiets v. Russia", §§ 25-31).

As a result, after consulting, the panel of judges drew attention to the fact that the order that has been established at this time was chosen in order to comply with the CCP, namely, the reasonableness of the time of trial, having considered the petition, the court decided to partially satisfy it and continue to examine the material evidence. In the event of the arrival of the victims - to resolve the issue of their interrogation. As for the combined order, the court considers that today it is unacceptable, because they understand that in this case, they will have to return many times to the study of the same evidence, which will lead to a loss of time.

Monitoring of criminal proceedings of Alexandr Schegolev (hearing of October 16, 2020)

On October 16, 2020, a hearing was held in the Shevchenko District Court of Kiev in the case of the ex-head of the Security Service of Ukraine (SBU) of the city of Kiev and the region, Alexandr Shchegolev, who is accused of organizing the violent dispersal of protests on February 18-19, 2014.

On this day, the term of the measure of restraint in the form of a personal obligation expired.

Prosecutor O.O. Suprun has filed a petition in advance to change the measure of restraint from a personal obligation to round-the-clock house arrest. The prosecutor O.N. Garkusha arrived at the hearing and read out this petition.

The prosecution referred to the same risks in the petition that the ISHR observers had previously described in the case reports, namely:

- to hide from the court:

1) since the accused faces a sentence of life imprisonment, this may induce him to commit actions that are aimed at evading criminal liability. But, the ECtHR notes that the risk of absconding cannot be measured only on the basis of the severity of a possible sentence, at least for further stages of trial. The risk must be assessed taking into account several relevant factors, in this context should be, in particular, assessed personal data, moral qualities, property associated with the respondent State, in which a person is prosecuted, as well as his international contacts” (paragraph 91 of the judgment in the case “Miminoshvili v. Russian Federation”).

2) the accused committed the crime (based on the text of the petition) in complicity with other heads of law enforcement agencies who are hiding from the court, are on the wanted list and who have been detained: A. Yakimenko, V. Totsky and others. The accused kept in touch with them, and there are real risks that accomplices may help him abscond from court. In the context of the aforementioned, the ECtHR notes that the behavior of an accomplice in a crime cannot be a decisive factor in assessing the risk that the accused will abscond. Such an assessment should be based on the personal characteristics of the accused” (paragraph 70 of the judgment in the case “Fedorenko v. Russian Federation”).

3) earlier the accused lived in Donetsk, where he held leadership positions and has strong social ties that can be used to avoid criminal liability.

- to destroy or hide evidence that is relevant to criminal proceedings, which means there is a risk of actions that will interfere with the identification of victims.

- to illegally influence victims and witnesses. Since A. Shchegolev held leading positions, he has special knowledge and skills. In particular, he can use connections with the SBU, the Ministry of Internal Affairs of Ukraine and other state and law enforcement agencies that can

illegally influence persons interrogated or subject to interrogation as victims or witnesses. At the same time, the prosecutor drew attention to the fact that earlier at the hearings the victims said that they were afraid of committing illegal actions by A. Schegolev and other persons involved in this case.

- other way to interfere with criminal proceedings. The prosecutor indicated that earlier A. Shchegolev had given false testimony, tried to obstruct the clarification of the real circumstances. The prosecutor drew attention to the repeated violations of the order established in the court, for which the court made remarks to the accused (for example, at the hearing of March 7, 2019).

Therefore, the prosecutor believed that all the alleged risks continue to exist and may hinder the effectiveness of the trial. Under such circumstances, softer measures of restraint, in his opinion, cannot provide and give an opportunity to control the place of stay of A. Shchegolev. The prosecutor indicated that only a measure of restraint in the form of house arrest with the use of a means of control would help to ensure further consideration of the case.

As indicated by the ECtHR, house arrest, taking into account its degree and duration, is considered a deprivation of liberty within the meaning of Art. 5 of the Convention (paragraph 104 of the judgment in the case “Buzadzhi v. Republic of Moldova”). The court ruled that appropriate and sufficient reasons are necessary for this type of deprivation of liberty, as in the case of pre-trial detention (paragraph 113).

The lawyer V. Rybin objected to the satisfaction of the petition. He considers that the application did not indicate sufficient reasons for changing the measure of restraint.

It should be noted that the prosecutor in his petition indicated the same reasons that were previously considered by the court. The court has repeatedly come to the decision that there is no reason to change the measure of restraint. The International Society for Human Rights also notes the fact that A. Schegolev has been under a personal obligation for a long period of time and the prosecution has never

been able to point out the factual violations by the accused of his procedural duties, always guided by assumptions.

As a result of the hearing, the court extended the measure of restraint in the form of a personal obligation for another 60 days, that is, until December 12, 2020, and refused to satisfy the prosecutor's request.

3.52 The Sheremet case

Pre-trial investigation of the Sheremet case (court hearings February 2020)

On July 20, 2016, the journalist Pavel Sheremet was murdered. Criminal proceedings were opened on the grounds of a crime under Part 3 of Art. 28, items 5.12, part 2, Art. 115 of the Criminal Code of Ukraine (intentional murder by an organized group). After almost 4 years of pre-trial investigation, 12.12.2019, the suspicion was announced to Y. Dugar (military paramedic), A. Antonenko (sergeant of the Special Operations Forces), Y. Kuzmenko (cardiac surgeon). ISHR experts began monitoring this criminal proceeding.

The criminal proceedings are at the stage of pre-trial investigation in the Pechersk district court of Kiev. Issues related to the measure of restraint were considered.

The prosecutor filed a motion to apply a measure of restraint in the form of detention for A. Antonenko and Y. Kuzmenko, and for Y. Dugar he applied for a round-the-clock house arrest (later changed to a night house arrest). According to the defense, these petitions contained only the risks stipulated by the Code of Criminal Procedure of Ukraine, which were not justified. So, for example, the prosecutor talked about the examination of video materials from surveillance cameras, which established the height of the killers, and after the defense began to use this data to confirm the innocence of the suspects, since the height of suspects differs by an average of 10 cm, the prosecutor spoke as follows: the conclusion was drawn that it is generally impossible to establish the height of people when walking and the expert did not even determine approximately

height.

According to the ECtHR, it is necessary to take into account the quality of the evidence, including whether the circumstances in which it was obtained raise doubts about their reliability or accuracy ("Dzhallokh v. Germany", para. 96). It is worth noting that this examination was the only evidence that the prosecutor operated on. The ISHR expresses its concern about this fact, since it is confident that the application of a measure of restraint restricting freedom should be supported by evidence that confirms the real existence of risks, since the right to liberty is of paramount importance in a democratic society and is guaranteed by the Constitution of Ukraine, the European Convention and a number of other international treaties.

On February 14, the Pechersky District Court granted the prosecutor's motions and extended the measure of restraint to the suspects. On February 20, lawyers tried to appeal this decision, but the suspects were not brought from the pre-trial detention center, so the hearing was adjourned.

It is worth noting that, according to the lawyer Y. Dugar, the burden of proof in this proceeding rests with the defense, since the prosecutor's office does not provide new evidence of guilt, but only tries to cast doubt on the evidence of innocence. For example, in court, 5 witnesses (2 nurses and 3 military) were interrogated by the defense, who confirmed the alibi of Y. Dugar and said that in July 2016 the latter was in a military hospital. In response to this, the prosecutor stated that the testimony should not be regarded as admissible, since they interrogated 10 employees from the same hospital who said they did not remember anything about the events of that time, which means that it was suspicious that some remember, and others did not.

It is important to note that shifting the burden of proof from the prosecution to the defense is an absolute violation of the presumption of innocence ("Telfner v. Austria", para. 15). ISHR experts believe that not only the aforementioned circumstance violates the presumption of innocence in this criminal pro-

ceeding, systematic statements in the media by law enforcement officials and the executive regarding the pre-trial investigation and suspects, in particular, may also cause a breach of the presumption. We emphasize that we do not ascertain the fact of the violation, but assume the possibility of its existence, since the presumption of innocence can be violated not only by a judge or court, but also by other state authorities (“Allene de Ribemont v. France”, para. 36; “Dactaras v. Lithuania”, paragraph 42). Article 6, paragraph 2, prohibits statements by state officials about pending criminal investigations that promote public opinion about the guilt of the accused and predetermine the assessment of the facts by the competent judicial authority (“Ismoilov and Others v. Russia”, para. 161; “Butkevichius v. Lithuania”, para. 53).

In addition, the lawyer Y. Dunar named the list of violations that he considers were committed in relation to his client:

1. Violation of the right to personal freedom (the suspect was detained without a court order and without drawing up a detention protocol).

2. Violation of the right to defense (lawyers and suspects are not provided with case materials for review). The “means” that any suspected of committing a crime must have the ability to familiarize themselves with the results of the investigation in preparation for defense (“Hussein and Others v. Azerbaijan”, para. 175; “Yukos Oil Company v. Russia”, para. 538).

It is especially important to note the fact that today this criminal proceeding causes serious resonance in society. The media daily publishes new information on the position of the investigation and defense. The International Society for Human Rights believes that this media activity can be regarded as a massive campaign against any of the participants in the trial or aimed at achieving a certain effect in forming the court’s opinion on this case. In this case, there will be a violation of the principle of a fair trial. The ECtHR in the case of “Kuzmin v. Russia”, paragraph 62, emphasized that an unrestrained press campaign could have a negative effect on the fairness

of the trial, influencing public opinion. In the course of their monitoring, the ISHR experts repeatedly faced situations when the court was subjected to pressure both from the executive branch and from mass media campaigns (A. Shchegolev’s case, A. Khandrykin’s case, V. Yanukovych’s case, former officers of “Berkut” riot police case, etc.). In the annual report for 2018, the ISHR experts identified pressure on the court as one of the negative trends of the year.

Why should mass media campaigns be regarded as one of the levers of pressure on the court? Based on the fact that the media act as a kind of regulators of public opinion, their publications can lead to the following consequences:

1. By their publications condemning court decisions, for example, calling them illegal, they can raise the level of mistrust in the judiciary as a whole. The judge of the ECtHR, Anna Yudkovskaya, at the 12th extraordinary congress of judges of Ukraine noted that one of the reasons for Ukraine’s leading position in the number of complaints to the ECtHR is the mass media campaigns, which put distrust for the courts in the minds of Ukrainians.

2. Mass publications denigrating a judge or a panel of judges can provoke people certain people to take measures that, in their opinion, can change the course of a judicial review. We faced a similar situation in the case of ex-officers of the “Berkut”, when the collegium changed measure of restraint for one of the accused to a lesser measure (detention was changed to house arrest), the media began to condemn this decision, and as a result, the presiding judge was attacked near his home, after which the accused was detained once again.

3.53 The trial of Nelia Shtepa

Monitoring of criminal proceedings of Nelia Shtepa (hearing 08.17.20)

On August 17, 2020, in the Ordzhonikidze District Court of Kharkov, a hearing was held in the case of Nelia Igorevna Shtepa. She is

charged with encroachment on the territorial integrity and inviolability of Ukraine, resulting in the death of people and the creation of a terrorist group or organization (according to part 3 of Article 110, part 1 of Article 258-3 of the Criminal Code of Ukraine).

The indictment was filed with the Chervonozavodskiy District Court of Kharkov on October 31, 2014. However, by the decision of the court of appeal dated February 1, 2017, the case was transferred for consideration to the Kominternovskiy district court of Kharkov, since after satisfying the applications for self-challenge of judge V.A. Ezhov in the Chervonozavodskiy District Court of Kharkov it was impossible to form a new composition of the court for the trial due to the insufficient number of judges. Accordingly, in the Kominternovskiy District Court of Kharkov, the case began to be considered from the stage of the preparatory hearing.

Further, by the decision of the Court of Appeal of May 26, 2017, the case was transferred from the Kominternovsky District Court of Kharkov to the Leninsky District Court of Kharkov. And again, the consideration started from the stage of the preparatory court session.

After that, the case was transferred to the Oktyabrskiy District Court of Kharkov, and then to Ordzhonikidzevskiy. Thus, the hearing of the case started over 5 times.

On October 24, 2019, the European Court of Human Rights ruled in the case of “Shtepa v. Ukraine” in favor of the accused and found that Ukraine had violated Articles 5 § 3, 6 § 1 of the Convention. The ECtHR also recognized that the pre-trial detention, which lasted 3 years and 3 months, had no sufficient grounds. The domestic courts motivated the decision by the seriousness of the charges, but not by specific facts (“Shtepa v. Ukraine”, paras. 22, 27).

In addition, in paragraph 36 of the judgment in this case, the ECtHR found that the domestic court did not exercise due diligence in this case. In particular, according to information provided by the authorities, hearings were often scheduled at intervals of three to four weeks, and in six cases hearings were postponed due to the failure of witnesses to appear

in court. The absence of witnesses led to the fact that the hearing was postponed for a total of three and a half months.

Regarding the judges’ repeated refusals from the case, the ECtHR notes that each refusal led to the reopening of the proceedings from the very beginning. Thus, the total delay in the proceedings was more than seven months. Having examined all the materials submitted to it and in the light of its case-law on this issue, the Court considers that in the present case the length of the proceedings was excessive and did not meet the “reasonable time” requirement (“Shtepa v. Ukraine”, paras. 37, 38).

The Ukrainian justice system is riddled with one global problem - the lack of judges. The Neli Shtepa case is a vivid example of how the understaffing of judges can affect the reasonableness of the length of criminal proceedings.

On July 21, 2020, the Law “On Amendments to the Criminal Procedure Code of Ukraine regarding the implementation of criminal proceedings in a court of first instance by a panel of judges” No. 817-IX was adopted, which amended Article 31 of the Criminal Procedure Code of Ukraine. Now, criminal proceedings in the court of first instance in relation to crimes for the commission of which the punishment is imprisonment for a term of more than ten years are carried out collectively by a court of three judges only at the request of the accused.

It would seem that a mechanism is envisaged that should facilitate the consideration of the case within a reasonable time frame. However, in the case of Nelia Shtepa, the aforementioned provision, on the contrary, became the basis for the postponement of the court session until the next month.

Thus, one of the judges, G.V. Matvievskaia, at the court session on August 17, 2020, recused herself, since the accused did not file a motion to consider the case by a panel of three judges. The judge acted in accordance with the law.

The transitional provisions of the above Law provide that in criminal proceedings in the court of first instance, in which, prior to the entry into force of this Law, the collegiate composition of the court was determined according

to the rules in force prior to the entry into force of this Law, and a preparatory hearing takes place, but the trial has not yet been scheduled, the trial in criminal proceedings shall be conducted and completed by the composition of the court provided for in the light of the provisions of this Law.

The court sessions in the case were constantly postponed, respectively, the case is still at the stage of the preparatory court session.

It should be noted that the preparatory hearing in the Ordzhonikidzevskiy District Court of Kharkov was appointed by a court decision as early as March 12, 2018. However, the stage of the preparatory court session has not ended.

Thus, the mechanism, which was supposed to speed up the consideration of complex criminal cases, in the case of Nelia Shtepa, on the contrary, became the reason for the postponement of the court session.

During the court session on August 17, it was not possible to hear the position of the parties regarding such a statement by the judge, and the parties agreed to postpone the court session in order to prepare for the session. The next court hearing was scheduled for August 27, 2020, but the same judge, G.V. Matvievskaia, will be on vacation at this time. Thus, the next hearing is scheduled for 04 September 2020.

The ECtHR observes that Article 6 § 1 of the Convention imposes on Contracting States an obligation to organize their legal systems in such a way that their courts can comply with each of the requirements of this provision, including the obligation to resolve cases within a reasonable time (“Duklos v. France”, para. 55).

However, even after the European Court found a violation of Nelia Shtepa’s right to trial “within a reasonable time”, the accused cannot exercise her right to receive, within a reasonable time, a final decision on the validity of the charges against her.

Monitoring of criminal proceedings of Nelia Shtepa (09.04.2020)

On September 4, 2020, in the Ordzhonikidze District Court of Kharkov, a hearing was held

in the case of Nelia Igorevna Shtepa. She is charged with encroachment on the territorial integrity and inviolability of Ukraine, resulting in the death of people and the creation of a terrorist group or organization.

Recall that one of the judges, G.V. Matvievskaia, at the hearing on August 17, 2020, recused herself, since the accused did not submit a petition to consider the case by a panel of three judges. On July 21, 2020, Law No. 817-IX was adopted, which amended Art. 31 of the Criminal Procedure Code of Ukraine. Now, criminal proceedings in the court of first instance in relation to crimes for the commission of which punishment is imprisonment for a term of more than ten years are carried out collectively by a court of three judges only at the request of the accused. The transitional provisions of Law No. 817-IX provide that in criminal proceedings in the court of first instance, in which, prior to the entry into force of this Law, the collegiate composition of the court was determined according to the rules in force prior to the entry into force of this Law, and a preparatory hearing takes place, and the trial has not yet been scheduled, the trial in the criminal proceeding is being conducted and completed by the composition of the court provided for in the light of the provisions of this Law.

On August 4, the question regarding composition of the court in the case was considered in detail.

The defense and the prosecution objected to the satisfaction of the judge’s application for recusation.

The panel of judges considers that the application of G.V. Matvievskaia is not subject to satisfaction, since Art. 75 of the Criminal Procedure Code of Ukraine does not provide for such a basis for self-recusation. In addition, the right to file a motion for the trial by one judge was not explained to Nelia Igorevna Shtepa.

During the court session, Nelia Igorevna Shtepa was explained the changes made to the Criminal Procedure Code of Ukraine. The accused used the right and stated that she did not insist on the collegial examination of

the case. A motion was filed with the court's registry to hear the case in the composition of one judge. As a result, the petition was granted - the case will be considered by judge O. Glibko.

In addition, at the beginning of the court session, it was established that new prosecutors had entered the case - Aleksandr Valerievich Chekin and Oksana Valerievna Pavlychuk.

The next court hearing was supposed to take place on September 10, 2020. However, the lawyers filed a motion to postpone the hearing as they were engaged in other proceedings.

It should be noted that the representatives of the ISHR monitored 3 court sessions in the case of Nelia Igorevna Shtepa - 08/17/20, 09/04/20, 09/10/2020. The last of them did not take place for the reasons indicated above, the other two were devoted to consideration of exclusively procedural issues. In fact, the examination of the case has essentially not advanced a single step.

The ECtHR holds that the State is responsible, under the "reasonable time" aspect of Article 6 § 1, for the delay in the delivery of judgments by the judges ("McFarlane v. Ireland", § 121). However, the length of the proceedings must be assessed in the light of the specific circumstances of the case, taking into account the criteria set out in the Court's case-law, in particular the complexity of the case, the behavior of the applicant and the competent authorities, and the importance to the applicant ("Chiarello v. Germany", § 45).

In this case, court sessions are scheduled with a frequency of approximately 3 times a month. Thus, the court is ready to deal effectively with the case. Despite the fact that the group of prosecutors was replaced, the prosecution is always present at court sessions. However, in spite of the fact that three defenders of the accused are involved in the proceeding, the last court session was postponed precisely on their initiative.

Monitoring of criminal proceedings of Nelia Shtepa (09.18.2020)

On September 18, 2020, in the Ordzhonikidze District Court of Kharkov, a hearing was held

in the case of Nelia Igorevna Shtepa. She is charged with encroachment on the territorial integrity and inviolability of Ukraine, resulting in the death of people, as well as the creation of a terrorist group or organization.

Previous court sessions were devoted to consideration of procedural issues. The interrogation of witnesses was scheduled at today's hearing. However, it did not take place, because the prosecutor was unable to ensure the appearance of witnesses in court, in the mode of videoconference with which the interrogation should take place. The witnesses indicated that they were in another city and could not appear at the Slavyanskiy District Court of the Donetsk Region.

The judge drew attention to the fact that it is the prosecutor's office that is responsible for taking measures to ensure the appearance of witnesses, since it was the prosecutor's office that filed the request for interrogation. In addition, during the court session it turned out that the representatives of the prosecutor's office did not even know in which city the witnesses were today and where it would be convenient for them to take part in the interrogation, in which court they could come to participate in the next court session to conduct interrogation.

It should be noted that in the case of Shtepa Nelia, the decision of the European Court of Human Rights drew attention to the fact that "... in six cases the hearings were postponed due to the absence of witnesses in court. The absence of witnesses led to the postponement of the hearing for a total of three and a half months (at the time of filing the application with the ECtHR). The Ukrainian government did not indicate whether any measures were taken to shorten the intervals between hearings or to punish absent witnesses" (para. 36 "Shtepa v. Ukraine"). The systematic non-appearance of witnesses is one of the aspects of the violation of Art. 6 para. 1 ECHR, established by the ECtHR.

However, positive dynamics can be traced in the trial. In para. 36 of the "Shtepa v. Ukraine" judgment, the European Court stated that "... the role of the national courts is to manage

their proceedings so that they are prompt and effective ('Silin v. Ukraine', para. 34). However, in the Court's opinion, the domestic court did not show due diligence in the Shtepa Nelia case. In particular, according to information provided by the authorities, hearings were often scheduled at intervals of three to four weeks."

To date, court hearings in the Ordzhonikidze District Court of Kharkov are scheduled systematically. For example, in September the judge planned to hold 4 court sessions: 09/04; 09/10; 09/18; 09/25. Thus, the national court, in the opinion of the ISHR, is trying to comply with the decision of the European Court regarding the need to hold court hearings without long interruptions. However, in this case, it is necessary to note the insufficient diligence of the parties in the case, which does not contribute to the effectiveness of judicial proceedings. On September 4, the hearing was postponed because the lawyers were employed in other courts. On September 10, the question of the composition of the court was decided, the case was not considered in essence. September 18 is the date of the current court session; the prosecutor did not ensure the attendance of witnesses. On September 25, the hearing will not take place, since the lawyer Marchenkov D.I. is participating in the elections (running for the mayor's office) and he needs to go to the Central Election Commission.

The European Court indicates that it considers the State to be responsible under the "reasonable time" aspect of Art. 6 for the delay in the delivery by the judges of their decisions ("McFarlane v. Ireland", para. 121).

In this case, the state is responsible for the delay in the delivery of decisions because of the prosecution's actions. Since the ECtHR notes that in criminal cases the whole issue of collecting evidence must be examined in the light of Art. 6 of ECHR and requires, inter alia, that the burden of proof lies with the prosecution. ("Barbera, Mesigue and Jabardot v. Spain", paras. 76-77).

Monitoring of criminal proceedings of Nelia Shtepa (hearings 10.07.2020, 10.16.2020)

On October 7 and 16, 2020, two court hearings in the case of Nelia Shtepa were supposed to take place in the Ordzhonikidze District Court of Kharkov. She is charged with encroachment on the territorial integrity and inviolability of Ukraine, resulting in the death of people and the creation of a terrorist group or organization.

The hearing did not take place on October 7th, since the judge - Glibko O.V. was on sick leave. And on October 16th, the defense side already filed a motion to postpone the hearing, referring to the introduction of strict quarantine (red zone in Kharkov).

It should be noted that in the case of Shtepa Nelia, the representatives of the ISHR are already monitoring the 7th court session (08.17, 09.04, 09.10, 09.18, 09.27, 10.07 and 10.16). Three of the designated hearings actually took place but were devoted exclusively to procedural issues. The remaining four did not take place for a variety of reasons - the involvement of lawyers in other criminal proceedings, the involvement of the accused (Shtepa Nelia is running for the post of mayor of the city of Slavyansk, and she had to go to the Central Election Commission), a hospitalization of a judge and the introduction of strict quarantine (postponement on the initiative of the defense).

Thus, hearings in this case are more often rescheduled than occurring.

The ECtHR reiterates that it holds the State responsible under the "reasonable time" aspect of Art. 6 for the delay in the delivery by the judges of their decisions ("McFarlane v. Ireland", § 121). However, the length of the proceedings must be assessed in the light of the specific circumstances of the case, taking into account the criteria set out in the ECtHR's case-law, in particular the complexity of the case, the behavior of the applicant and the competent authorities, and the importance to the applicant. ("Chiarello v. Germany", § 45).

The representatives of the ISHR believe that the responsibility for considering a case within a reasonable time in this case cannot be as-

signed only to the state. As we can see, the postponement of three of the four analyzed sessions took place on the initiative of the defense.

Monitoring of criminal proceedings of Nelia Igorevna Shtepa (11/23/2020)

On November 23, 2020, the Ordzhonikidze District Court of Kharkov heard the case of N.I. Shtepa. She is charged with encroachment on the territorial integrity and inviolability of Ukraine, resulting in the death of people and the creation of a terrorist group or organization.

Earlier, the court session was repeatedly postponed. One of the reasons for the postponement was that the defendant was sick and tested positive for Covid-19. At the beginning of the trial, she provided the court with medical documents confirming this fact.

The court session on November 23, 2020 began with the interrogation of the witness A.V. Pivovar using video communications.

It is worth noting that the court has not yet moved on to the examination of evidence and the witness was interrogated as part of the consideration of the issue of applying a measure of restraint.

Earlier, the prosecution filed a petition to apply a measure of restraint against N.I. Shtepa - partial house arrest.

At the hearing, witness A.V. Pivovar stated that N. I. Shtepa and her lawyers were exerting pressure on him. During his stay in the pre-trial detention center in 2017, the witness wrote a statement to the prosecutor's office that he received threatening letters and pressure was being exerted. Representatives of the Security Service of Ukraine (SBU), in agreement with the accused, threatened the witness's wife. In addition, he indicated that, through another witness, the defendant's lawyer sought to meet with A.V. Pivovar. But the witness did not accept such an offer.

The defendant's lawyer A.V. Tatanakin filed a letter to the court from the Bakhmutskiy Penitentiary Institution that witness A.V. Pivovar during his stay in the institution did not receive or send correspondence.

In addition, the lawyer D.I. Marchenko asked the court to attach to the case materials an extract from the Unified Register of Pre-trial Investigations that N.I. Shtepa asks to take measures and bring to justice A.V. Pivovar for knowingly giving false testimony.

N.I. Shtepa indicated that earlier, when deciding on the application of a measure of restraint, the Leninsky District Court of Kharkov had already interrogated A.V. Pivovar, took into account his testimony and changed the measure of restraint from detention to house arrest.

In accordance with paragraph 1 of Art. 177 of the Criminal Procedure Code of Ukraine, a measure of restraint, among other things, is applied to prevent attempts to influence witnesses. On this point, the ECtHR stated: as regards the possibility of putting pressure on witnesses, the Court reiterates that the domestic courts must show that during the relevant period of the applicant's detention there continued to be a substantial risk of intimidation of witnesses, it is not enough to rely only on some abstract possibility, not supported by any evidence. The Court must also analyze pertinent factors such as progress in the investigation or proceedings, the applicant's personality, his behavior before and after arrest, as well as any other specific factors to justify the risks posed by him being able to abuse his returned freedom by acting for the purpose of falsifying or destroying evidence, or putting pressure on victims ("Sokurenko v. The Russian Federation", paragraph 88).

The International Society for Human Rights believes that in the case of N.I. Shtepa, the representatives of the Prosecutor's Office have seriously approached the substantiation of their position on the need to apply a measure of restraint - partial house arrest. The prosecution defends the position that N.I. Shtepa unlawfully influences the witnesses.

In addition, the prosecution insisted on the interrogation of the witness - the wife of A.V. Pivovar. At the court hearing on November 23, 2020, she could not come for interrogation, since she could not leave work.

3.54 The trial of Ivan Shurman

Monitoring of the case of Shurman Ivan Vladimirovich (session of 11.03.2020)

On November 03, 2020, a hearing was held in the Berdichev City District Court of the Zhytomyr Region on the case of Shurman I. He is accused of murdering a woman and is charged with paragraph 7 of part 2 of article 115 of the Criminal Code of Ukraine.

On July 5, 2018, a 37-year-old woman was brutally murdered in Berdichev when she went out to walk the dog. Shortly after the woman left the apartment, she was found with a slit throat and multiple stab wounds. Two days later, Shurman I., a 15-year-old teenager, was arrested and was suspected of committing this crime. At present, less than half of the witnesses have been questioned in the case. During interrogations, a large discrepancy is seen in the testimony and time of events. Most of the evidence does not confirm the involvement of the accused in the crime and characterizes him from a positive side.

The defendant's lawyer Krivoruchko L., did not appear at the hearing and filed a motion to postpone the trial due to the deteriorating health condition. She insists that the consideration of the case should not be carried out without her presence, because according to paragraph 1 of part 2 of Article 52 of the Criminal Procedure Code of Ukraine, the participation of a defense attorney in criminal proceedings against persons accused of committing a criminal offense under the age of 18 is mandatory.

In addition, the composition of the panel of judges was incomplete due to the fact that judge Vdovichenko T. was on sick leave.

It is worth paying attention to the fact that the situation with court hearings, which are postponed or held by an incomplete collegium, since the judges are ill, is not unique. The International Society for Human Rights is faced with such a problem in many criminal proceedings: the case of Shtepa N., the case of Melnik A., Kryzhanovsky A., Kunik I. and others.

At the court session on 11.03.2020, it was planned to consider the following issues: 1) on

the possibility of continuing the consideration of the case with such a composition of the court and its participants - all the participants expressed their opposition; 2) on the advisability of extending the measure of restraint to the accused.

The prosecutor and other participants in the criminal proceedings objected to considering these issues without the defense. It should be noted that recently the ISHR faced an extension of the measure of restraint without the participation of defenders (the case of Filtsev A.), despite such a discrepancy between the court's definition and the norms of the CCP, the appellate court left such a decision unchanged, and the complaint of Filtsev's defenders was dismissed. That can undoubtedly create an unofficial precedent in non-observance of the right to defense in Ukrainian courts.

In accordance with Part 1 of Article 53 of the Criminal Code of Ukraine, the court is obliged to involve a defense attorney to conduct a separate procedural action in the manner prescribed by Article 49 of this Code, exclusively in urgent cases when there is a need to conduct a procedural action with the participation of a defense lawyer, and a previously notified defense lawyer cannot come to participate in the procedural action or ensure the participation of another defense lawyer.

The judge made a decision to involve a defense lawyer from the Legal Aid Center to resolve the issue of extending the measure of restraint for Shurman I.

According to Part 3 of Article 331 of the Code of Criminal Procedure of Ukraine, regardless of the availability of petitions, the court is obliged to consider the expediency of continuing the detention of the accused until the expiration of a two-month period from the date the indictment was filed with the court and the petition to apply a measure of restraint in the form of detention against the accused.

In accordance with paragraph 5 of part 20-5 of section XI of the "Transitional Provisions" of the Criminal Procedure Code of Ukraine, temporarily, for the period of quarantine established by the Cabinet of Ministers of Ukraine (Resolution of the Cabinet of Ministers of

Ukraine No. 641 dated 07.22.20 as amended in accordance with Resolution No. 956 dated 10.13. 20) in order to prevent the spread of coronavirus disease (COVID-19) on the territory of Ukraine, if it is impossible for a panel of judges to consider an application for an extension of a measure of restraint in the form of detention in the period specified by this Code, it may be considered by the presiding judge.

The measure of restraint ends on November 14, 2020. The next court session is scheduled for November 24, 2020. This means that the chairman needs to consider the issue of extending the measure of restraint on November 3, 2020.

A lawyer from the Secondary Legal Aid Center arrived at the hearing. As a result of the examination, the court, having heard the opinions of the participants, extended the detention of Shurman I. for another 60 days.

So, the accused was elected a measure of restraint in the form of detention on July 09, 2018, and subsequently the period of detention was constantly extended, most recently on September 16, 2020. The risks indicated in the prosecutor's petition remained the same as the previous times (all that are provided for in Article 177 of the Criminal Procedure Code of Ukraine).

In a decision of September 16, 2020, the court indicated: currently, Shurman I., already in this trial, continues to be accused of committing an especially grave violent crime. The sanction of the article, which provides for criminal liability for the crime of which Shurman I. is accused, provides for punishment in the form of imprisonment for a term of 10 to 15 years or life imprisonment with confiscation of property in the case provided for in paragraph 6 of part 2 of this article. When considering the prosecutor's petition, it was essentially established that the state of health of the accused (according to the data available to the court), property status, strength of his social ties, his characteristics have not changed (age has changed upward), which indicates that there is no risk reduction, in this part characterizing this person.

In the context of the mentioned above, the

International Society for Human Rights cannot but draw attention to the fact that the practice of the ECtHR has an absolutely opposite vector.

The ECtHR has repeatedly noted that the severity of the charge cannot in itself justify long periods of detention (*Ečius v. Lithuania*, para. 94).

According to paragraph 3 of Article 5 of the Convention, after a certain period of time, only the existence of reasonable suspicion does not justify the deprivation of liberty, and the courts must give other grounds for extending the detention (*Borisenko v. Ukraine*, para. 50). Moreover, these grounds must be clearly indicated by the national courts (*Yeloyev v. Ukraine*, para. 60; *Kharchenko v. Ukraine*, para. 80).

The existence of a reasonable suspicion that the detainee has committed a crime is a prerequisite and sine qua non for the legality of his continued detention, but after the expiration of the time, such suspicion will not be enough to justify a prolonged detention. The court has never tried to translate this concept into a clearly defined number of days, weeks, months or years, or at different times depending on the severity of the crime. Once "smart suspicion" is no longer sufficient, the court must establish other court-based grounds that will continue to justify the deprivation of liberty (*Maggie and Others v. The United Kingdom*, paras. 88-89).

The Court also recalls that the grounds for suspicion remain unchanged. If the arrested person has committed an offense, this is a sine qua non condition for his continued detention to be considered lawful, but after a while this condition is no longer sufficient. The Court must then establish other reasons on which the decisions of the judicial authorities are based, which continue to justify the deprivation of liberty. If these grounds are found to be "appropriate" and "sufficient", then the Court shall examine whether the competent national authorities have shown "special good faith" in the conduct of the proceedings (*Labita v. Italy*, para. 153).

In the context of the above positions of the

European Court, it is necessary to analyze the court's decision of 11.03.2020 for the purpose of whether the grounds for extending the term of detention have changed.

As a result of the analysis, it was established that the past and current decisions are identical in substantiating the court's position on the need to extend the terms of detention.

The court often found a violation of paragraph 3 of Article 5 of the Convention in cases where the domestic courts continued detention, referring mainly to the gravity of the charges and using formulaic language, without even considering specific facts or the possibility of applying alternative measures ("Kharchenko v. Ukraine", paras. 80-81; "Tretyakov v. Ukraine", para. 59).

Thus, the International Society for Human Rights is concerned that prolongations of detention may be automatic.

Monitoring of the case of Shurman Ivan Vladimirovich (session of 11.24.2020)

On November 24, 2020, the Berdichevsky City District Court of the Zhytomyr Region continued to consider the criminal proceedings in the case of I.V. Shurman, who is accused of the brutal murder of a woman and is charged with paragraph 7 of part 2 of article 115 of the Criminal Code of Ukraine.

The court session was attended by the prosecutor, the legal representative of the accused, one of the victim's lawyers and the victim himself.

From the defender L. Krivoruchko, a petition was received to participate in the court session by videoconference due to the spread of coronavirus disease in Ukraine. According to the prosecutor, this ground is valid and, moreover, the possibility of video broadcasting is provided for by paragraph 1 of part 1 of article 336 of the Criminal Procedure Code of Ukraine.

At the hearing, the problem of the non-appearance of witnesses from the prosecution was raised. The court claims that it is taking all the necessary steps to ensure that they are present. The prosecutor insisted on bringing in adult witnesses to testify in the courtroom.

The International Society for Human Rights believes that the absence of witnesses is one of the reasons for the lengthy criminal proceedings.

On November 24, 2020, the court was forced to postpone the consideration of the case until next month.

With regard to this issue, the ECtHR means that the judge of the national court is obliged to decide whether or not a witness is required to appear in court ("Brickmont v. Belgium", para. 89).

In addition, the ECtHR recalls that all evidence must be examined in open proceedings in the presence of the accused in order to ensure the adversarial nature of the process ("Krivoshapkin v. Russia", para. 51).

The fundamental requirement, in accordance with paragraph 1 and subparagraph (a) of paragraph 3 of article 6, will be a valid opportunity for the accused to challenge the testimony against him and to question the witness, either at the time of the testimony or later ("Van Mechelen and Others v. the Netherlands", para. 51; "People v. Switzerland", para. 49). Although there are exceptions to this principle, they should not violate the rights of the defense. If the impossibility of questioning witnesses or obtaining the right to question them is due to the fact that they are absent or otherwise unavailable, the authorities should make reasonable efforts to ensure their presence at the trial ("Bonev v. Bulgaria", para. 43).

The International Society for Human Rights is concerned that in the I.V. Shurman case, the absence of witnesses has a negative impact on a reasonable time frame for criminal proceedings. Recall that on July 09, 2018, the accused was placed in custody. The ECtHR often considered cases of violation of reasonable time limits in cases against Ukraine and indicated that those accused in criminal proceedings should have the right to have the proceedings in their case carried out with particular care, especially in the case of any restriction of freedom for a period until the end of the proceedings ("Doroshenko v. Ukraine", para. 41).

The provisions of article 6 of the European Convention on Human Rights indicate that

accused persons cannot remain in the dark about their fate for too long (“Nakhmanovich v. Russia”, para. 89, “Ivanov v. Ukraine”, para. 71).

In the opinion of the ECtHR, “by requiring the consideration of cases within a ‘reasonable time’, the Convention emphasizes the importance of administering justice without delay, which may jeopardize its effectiveness and credibility” (“Vernillo v. France”, para. 38).

Monitoring of the case of I.V. Shurman (hearing dated 12/14/2020)

On December 14, 2020, the Berdichevsky City District Court of the Zhytomyr Region continued to consider the criminal proceedings in the case of Ivan Shurman, who is accused of murdering a woman and is charged with paragraph 7 of part 2 of article 115 of the Criminal Code of Ukraine (premeditated murder with a hooligan motive).

The prosecutor, representatives of the victims, the victims themselves, the legal representative of the accused and two witnesses attended this hearing.

From the defender L. Krivoruchko a petition was received with a request to postpone the hearing, since she was at another hearing at that time. In the petition, the lawyer noted that the refusal to postpone the hearing was a violation of Art. 6 of the Convention, namely the right to defense.

As a reminder, the right of a person accused of a crime to be effectively defended by a lawyer is one of the fundamental characteristics of a fair trial (“Salduz v. Turkey”, para. 51).

Further, the court raised the question of whether it was possible to continue considering the case without the participation of a defense attorney, to which the prosecutor indicated that if there was a petition from defense counsel L. Krivoruchko, they could not continue the consideration of the case.

The prosecutor also mentioned that last time she petitioned to bring one of the witnesses, since the girl (witness) does not respond to summons. Regarding the non-appearance of witnesses, the ECtHR notes that the question of the existence of a valid reason for the

non-appearance of a witness must be considered before it is determined whether such evidence is the only one or is decisive. If the witness did not appear in person to testify, it is imperative to establish the justification for his absence (“Al-Kawaya and Taheri v. The United Kingdom”, para. 120; “Gabrielyan v. Armenia”, paras. 78, 81-84). But, according to the prosecutor, the reasons why some witnesses do not regularly attend hearings are unknown. According to paragraph 1 of part 2 of article 66 of the Criminal Procedure Code of Ukraine, the witness is obliged to arrive when summoned by the prosecutor or the court.

In addition, the prosecutor filed a petition to extend the measure of restraint to the accused, but since such a petition could not be considered without the presence of a lawyer, it became necessary to apply to the Center for the Provision of Free Legal Aid to attract a lawyer to one court session, as it became necessary to resolve this issue. According to paragraph 20-5 of section XI of the “Transitional Provisions” of the Criminal Procedure Code of Ukraine for the period of quarantine established by the Cabinet of Ministers of Ukraine (Resolution of the Cabinet of Ministers of Ukraine No. 641 dated 07.22.20) in order to prevent the spread of coronavirus disease (COVID-19) on the territory of Ukraine, if it is impossible for the panel of judges to consider a petition for the extension of a measure of restraint in the form of detention, it may be considered by the presiding judge. The urgency of extending the measure of restraint, which expired on January 3, 2021, is justified by the fact that the presiding judge is planning a vacation, and in January, the Cabinet of Ministers of Ukraine introduces a full lockdown in the country, therefore, it is impossible to appoint another hearing in the coming days until January, and those the question is necessary since the next hearing will take place in February 2021.

A little later, lawyer V. Dudnik from the Free Legal Aid Center appeared and after a break the court continued to consider the issues.

Another prosecutor arrived for the second

part of the session and read out a motion to bring witnesses, which was already mentioned earlier. The defense attorney indicated that he could not object to the prosecutor's petition if there were grounds for the need for such a procedural action. As you know, the witness did not come to the court session when summoned, without informing the reasons for failure to appear, the time and place of the court session was duly reported. The prosecutor considers it necessary to force the witness to attend the court session. Other participants supported the prosecutor's motion.

Considering that the appearance of a witness at the hearing to clarify all the circumstances is mandatory and the court cannot consider criminal proceedings without interrogating her, for the purpose of prompt consideration of the criminal proceedings, the court considers it an effective measure of coercion under Art. 139 of the Criminal Procedure Code of Ukraine – enforcing appearance.

Observers of the ISHR have more than once paid attention and are concerned that the constant extension of a measure of restraint in the form of detention, without sufficient grounds, may be automatic, which is also observed in the cases of Melnik , Zolotarev, and many others, where prosecutors constantly refer only to the gravity of the charge and to the fact that the risks they previously identified are not diminishing.

Regarding the reference to the seriousness of the charges as the main reason for the extension of the detention period, the ECtHR has repeatedly acknowledged that this argument does not in itself constitute a basis for prolonged detention. While the severity of the charges is an essential element in assessing the threat of escape and re-committing a crime, the further need to restrict freedom cannot be justified by the severity of the crime alone. Also, the extension of the period of detention cannot be used as a punishment in the form of imprisonment. This is especially true in such cases . . . where the legal qualification of the crime and, as a consequence, the charges against the applicant were determined by the prosecution without a judicial assessment of

the question, whether the collected evidence is indeed grounds for believing that the suspect committed the crime imputed to him (“Evgeny Kuzmin v. Russian Federation”, para. 30).

As a result of the hearing, the court granted the prosecutor's petition, continued the measure of restraint in the form of detention, as it sees no reason to change the measure, referring to the fact that the risks did not cease to exist. Regarding the defense, the judge noted that the proceedings actually did not continue due to the systematic failure to appear of defense counsel Krivoruchko, her constant groundless motions, and because of this, the court could not complete the examination of the evidence and draw conclusions on the case (witnesses for the defense appeared at this hearing, since there was no lawyer, it was not possible to interrogate them). The European Court of Human Rights notes that the right of a person accused of a crime to be effectively defended by a lawyer is one of the fundamental characteristics of a fair trial (“Salduz v. Turkey”, para. 51).

3.55 The trial of Vitaliy Sobenko and others

Monitoring of the case of Vitaliy Sobenko and Arthur Melnikov (session 01.29.20)

01/29/2020 in the Frankovskiy district court of the city of Lvov a criminal case No. 12014140080002713 was examined on charges of Sobenok Vitaliy and Melnyk Arthur in committing a crime under Part 2 of Article 186 of the Criminal Code of Ukraine “Robbery with the use of violence not dangerous to the life or health of the victim, or with the threat of such violence, or committed repeatedly, or by prior conspiracy by a group of persons”.

The accused V. Sobenko, his legal representative Sobenko Elena, the defendant's lawyer, Oleg Ivanov, the prosecutor of the Lvov city prosecutor's office No. 3, Yulia Germanovich, arrived at the hearing.

Accused Melnikov A. and his legal representative at the hearing did not arrive. The lawyer of the accused A. Melnikov at the hear-

ing also failed to appear. They did not report the reason for their failure to appear to the court. No requests were received from them either. In addition, the victim, Sekh Arsen, did not arrive at the hearing; he did not explain the reason for the failure to appear.

Prosecutor Germanovich Yu. filed a motion to postpone consideration of the case in connection with the failure to appear of the participants in the trial, namely the accused Melnikov A., his lawyer, as well as the victim Sekh A., whose presence is mandatory.

The defendant Sobenko V., his legal representative and lawyer Ivanov O. at the hearing supported the request of the prosecutor Germanovich Yu. The court granted this request and, in this connection, postponed the consideration of the criminal proceedings on the charge of Sobenko V. and Melnikov A.

It should be recalled that the case is at the preparatory stage since 2014.

According to the lawyer of V. Sobenko - O. Ivanov, this judicial proceeding violated clause 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, namely the right to a trial by a court within a reasonable time.

The International Society for Human Rights also believes that the inability to complete the preparatory hearings since 2014 has signs of a protracted process. According to the decision of the ECtHR in the case of “Nechiporuk and Yonkalo v. Ukraine”, the court notes that the moment from which article 6 begins to apply to “criminal” matters depends on the circumstances of the case. The leading place in a democratic society to a fair trial is prompting the Court to give preference to the “substantive” rather than the “formal” concept of “prosecution”, referred to in paragraph 1 of Article 6 of the Convention. In addition, the ECtHR judgment in the “Vergelsky v. Ukraine” case states that the reasonableness of the length of the proceedings should be assessed in the light of the specific circumstances of the case and taking into account criteria such as the complexity of the case, the conduct of the applicant and the relevant authorities. Furthermore, the Court insists that a person accused of a crime

should not be in an uncertain state of his fate for too long.

3.56 The trial of Sorokin and Sorokin

Monitoring of the case of Sorokin Sergey Vladimirovich, Sorokin Vladimir Viktorovich (session on April 30, 2020)

04/30/2020, in the Shevchenkivsky District Court of the city of Lvov, a criminal case was examined in case number 12019140090003025 on charges of Sorokin Sergey Vladimirovich and Sorokin Vladimir Viktorovich of committing a crime under Part 4 of Art. 187 of the Criminal Code of Ukraine (robbery aimed at seizing property on a large or especially large scale or committed by an organized group, or combined with causing grievous bodily harm).

The criminal proceedings are examined collectively, composed of three judges: Baeva A.I., Eder P.T., Glinskaya D.B. The trial in this case was scheduled for 2:30 pm and began 30 minutes late. The International Society for Human Rights begins monitoring this case.

The course of the hearing. At the hearing the prosecutor Petlyovany D. I. filed a motion to extend to the accused Sorokin Sergey and Sorokin Vladimir measures of restraint in the form of detention for 60 days, referring to the risks under paragraphs 1, 3, 5 of Part 1 of Art. 177 Code of Criminal Procedure of Ukraine. The prosecutor argued that the defendants could try to hide from the court, illegally influence witnesses, commit another criminal offense, or continue to engage in criminal activity, he asked the court to satisfy request without the possibility of making a bail.

The representative of the victim, lawyer Golen I.R. supported the request of the prosecutor.

The lawyer of the accused Sorokin S.V. - Dolya R. B. objected to the request of the prosecutor, paying attention to the fact that the risks referred to by the prosecutor for the extension of the measure of restraint are the same as those cited by the prosecution for the election of such a measure. According to

attorney Dolya R.B., in order to extend the previously selected measure of restraint to the accused, the risks indicated by the prosecutor must be substantiated and supported by evidence. He considers that there are no grounds for extending the measure of restraint in the form of detention.

As the European Court has repeatedly noted in its decisions, when raising the question of extending a measure of restraint, not only the risks that existed at the time the measure of restraint was taken should be given, but also new risks that could affect in any way the circumstances referred to by the prosecutor.

According to paragraph 3 of Art. 5 of the Convention after a certain period of time, the mere existence of a reasonable suspicion does not justify the deprivation of liberty, and the courts must give other reasons for the extension of detention (“Borisenko v. Ukraine”, para. 50). Moreover, these grounds must be clearly indicated by the national courts (“Eloev v. Ukraine” para. 60, “Kharchenko v. Ukraine” para. 80).

The lawyer of the accused Sorokin V.V. - Zhivko O. B. also objected to the petition of the prosecutor. The defense counsel believes that in his application the prosecutor relies on his own assumptions, without citing any arguments or facts.

The ECtHR often found a violation of paragraph 3 of Art. 5 of the Convention in cases where national courts continued detention of the accused, referring mainly to the gravity of the charges and using “standard” language, without even considering specific facts or the possibility of alternative measures (“Kharchenko v. Ukraine”, pp. 80-81; “Tretyakov v. Ukraine” para. 59).

Defendants Sorokin S.V. and Sorokin V.V. supported the opinion of their defenders.

The court, having conferred, decided to satisfy the prosecutor’s request by extending the detention for 60 days.

Monitoring of the case of Sorokin Sergei Vladimirovich, Sorokin Vladimir Viktorovich (hearing on June 22, 2020)

On June 22, 2020, the Shevchenkivsky District Court of the city of Lviv considered the case in criminal proceedings number 12019140090003025 on charges of Sergei Vladimirovich Sorokin and Vladimir Viktorovich Sorokin of committing a crime under Part 4 of Article 187 of the Criminal Code of Ukraine (robbery aimed at seizing property on a large or especially large scale, or committed by an organized group, or combined with causing grievous bodily harm).

The criminal proceedings are considered collegially, consisting of three judges: A.I. Bayeva, P.T. Eder, D.B. Glinskaya. The hearing on this case was scheduled for 2:30 pm, and began with a delay of 10 minutes. The International Society for Human Rights continues to monitor this case.

The course of the hearing. At the hearing, the prosecutor Petlevaniy D.I. filed a petition to extend for the accused Sergei Sorokin and Vladimir Sorokin the measure of restraint in the form of detention for a period of 60 days, referring to the risks provided for in paragraphs 1, 3, 5 p. 1 of Article 177 of the Criminal Procedure Code of Ukraine. The prosecutor motivated by the fact that the accused may try to hide from the court, unlawfully influence witnesses, commit another criminal offense, or continue to engage in criminal activity. He asked the court to satisfy his request without the possibility of posting bail. According to the prosecutor, a number of written evidences confirming the guilt of the accused Sorokins were examined at the hearing.

The lawyer of the accused Sorokin S. V. - Dolya R. B. objected to the prosecutor’s request. He emphasized that his client had admitted his guilt, however, the evidence referred to by the prosecutor for extending the measure of restraint in the form of detention is inadequate and asked the court to pay special attention to this. In the opinion of the ECtHR, the quality of the evidence must be taken into account, including whether the circumstances under which it was obtained raise

doubts about its reliability or accuracy (“Jaloha v. Germany”, para. 96).

The defendant’s lawyer Sorokin V.V. - O.B Zhivko also objected to the prosecutor’s petition. According to the lawyer, the risks referred to by the prosecutor are not substantiated. The risk that the suspect would obstruct the proper conduct of the pre-trial investigation cannot be assessed in the abstract, but must be supported by factual evidence (“Bekchiev v. Moldova”, para. 59).

The defense asks not to apply measure of restraint in the form of detention, but apply it in the form of a personal obligation. The defendants’ lawyers asked the court to refuse to satisfy the prosecutor’s petition to extend the measure of restraint for the accused in the form of detention.

Accused Sorokin S.V. and Sorokin V.V. supported the opinion of their defenders.

The court, after consulting, decided to grant the prosecutor’s request, extending the detention for 60 days.

Monitoring of the case of Sorokin Sergei Vladimirovich, Sorokin Vladimir Viktorovich (hearing 08/31/2020)

On August 31, 2020, in the Shevchenkivsky District Court of Lvov, a case was considered in criminal proceedings number 12019140090003025 on charges of Sergei Vladimirovich Sorokin and Vladimir Viktorovich Sorokin of committing a crime under Part 4 of Article 187 of the Criminal Code of Ukraine (robbery aimed at seizing property on a large or especially large scale, or committed by an organized group, or combined with causing grievous bodily harm).

The criminal proceedings are considered collegially, consisting of three judges: A.I. Bayeva, P.T. Eder, D.B. Glinskaya. The hearing in this case was scheduled for 11:00 am and began almost an hour late. The International Society for Human Rights continues to monitor the observance of the right to a fair trial in this case.

The course of the hearing. At the hearing the prosecutor Kravchik R.R. filed a petition for the extension of the measure of restraint in the

form of detention for a period of 60 days, referring to the risks provided for in paras. 1, 3, 5 part 1 of Article 177 of the Criminal Procedure Code of Ukraine. The prosecutor motivated it by the fact that the accused could try to escape from the court, unlawfully influence witnesses, commit another criminal offense, or continue to engage in criminal activity, asked the court to satisfy his request without the possibility of posting bail.

The lawyer of the accused V.V. Sorokin - O.B. Zhivko, objected to the prosecutor’s motion. According to the defense attorney, all the requests of the prosecutor are identical. For seven months, the prosecutor has not provided any other evidence for the detention of the accused. The ECtHR has often found a violation of paragraph 3 of Article 5 of the Convention in cases where domestic courts continued detention, referring mainly to the gravity of the charges and using formulaic language, without even considering specific facts or the possibility of applying alternative measures (“Kharchenko v. Ukraine”, paras 80-81; “Tretyakov v. Ukraine” para. 59).

The lawyer of the accused S.V. Sorokin – R.B. Dolya, also objected to the prosecutor’s motion. According to the lawyer, the risks referred to by the prosecutor are not substantiated. The risk that the suspect would obstruct the proper conduct of the pre-trial investigation cannot be assessed in the abstract but must be supported by factual evidence (“Bekchiev v. Moldova”, para. 59).

The defense asked not to apply the measure of restraint in the form of detention, but to replace it with a personal obligation. The defendants’ lawyers asked the court to refuse to satisfy the prosecutor’s request to extend the measure of restraint for the accused.

Accused Sorokin S.V. and Sorokin V.V. supported the position of their defenders.

The court, after consulting, decided to grant the prosecutor’s request, extending the detention for 60 days.

3.57 The trial of Nikolai Sorokopud and others

Monitoring of criminal proceedings of Sorokopud Nikolai Alexandrovich, Omelyanyuk Nikolai Vladimirovich (December 23, 2020)

12/23/2020 in the Lutsk City District Court of the Volyn region with the participation of Judge Artysh Ya.D. a court hearing was held in case No. 161/3455/18 on charges of Sorokopud N.A. and Omelyanyuk N.V. in the commission of a criminal offense under Part 3 of Art. 368 of the Criminal Code of Ukraine - "acceptance of an offer, promise or receipt of an unlawful benefit by an official". According to the version of the investigation, the defendants, who were members of the attorney qualification commission, back in 2017 received a bribe of more than 2,000 dollars for successfully passing of the bar qualification exam.

Before starting the consideration of the case, the judge indicated that a preliminary break was announced in connection with the satisfaction of requests from the public, journalists regarding an open consideration of this case and setting up the broadcast on the official website of the "Judicial Power of Ukraine".

The lawyer of the defendant Sorokopud N.A. asked the court to attach to the case a number of evidence proving the innocence of his client, namely: information about the telephone calls of Sorokopud N.A. in the period from 09.17.2017 to 09.28.2017; information from the Internet regarding a certain account to which the accused had access; the declaration of the applicant in the case - police officer Khomyuk S.P. for 2016-17; personal characteristics of Sorokopud N.A., issued by the Head of the National Bar Association of Ukraine, the Bar Council of Ukraine. The court admitted this evidence to the case.

In turn, the prosecutor noted that the evidence presented by the lawyer in no way refutes the factual circumstances of the charge. Moreover, the prosecutor believes that the lawyer confuses the court by providing inappropriate evidence, since it does not confirm or establish the facts examined by the prosecution.

After the court suggested that the accused should give evidence, the prosecutor began to petition for time to change the indictment in court. The court granted this request, the defense did not object. But the defense noted that these actions on the part of the prosecutor should take place more quickly in order to avoid delaying the consideration of the case. Moreover, the lawyer pointed out that such a request had previously been made by the prosecution.

The experts of the ISHR suggest that the provision of this kind of evidence to the court, which is not directly related to the prosecution, can be used to delay the proceeding, or to maximize the number of volumes of the case, complicating it. And this, in turn, may have signs of a violation of the principle of reasonable terms of the trial. It should be noted that the indictment was submitted to the court on 03/07/2018. Thus, the case of Sorokopud N.A. and Omelyanyuk N.V. has been considered in court for more than 2 years.

Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms recognizes for every person prosecuted in a criminal case the right to receive, within a reasonable time, a final decision on the justification of the charges against him, or rather to ensure that the accused do not remain for a long time under the weight of the charges and that a decision be made on the well-foundedness of the charge ("Vemkhov v. Germany", para. 18, "Julia Manzioni v. Italy", para. 25, "Brogan and Others v. the United Kingdom", para. 65).

In addition, according to the observer of the International Society for Human Rights, one of the reasons for the delay in the consideration may be a second request from the prosecutor to give time to change the indictment.

3.58 The trial of Alexander Streletsky and others

Monitoring the case of Streletsky and others (session on March 16, 2020)

On March 16, 2020, in the Zaporizhzhya district court of the Zaporizhzhya region, an open

court session was held by videoconference with the State Institution “Bakhmutsk Penitentiary Institution No. 6” on the application of Alexander Pavlovich Streletsky on reconsideration of the verdict of the Zaporizhzhya district court of the Zaporizhzhya region on April 16, 2015, convicted under Article 27 p.3; Article 115 p.2; Clause 6,9, 12,13 of the Criminal Code of Ukraine; Article 190 p. 3; Article 357 p. 3; Article 358 p. 2, 3 of the Criminal Code of Ukraine.

Recall that on April 16, 2015, the panel of judges of the Zaporizhzhya District Court of the Zaporizhzhya Region passed a sentence in a lengthy lawsuit with significant public impact.

Alexander Streletsky, whom the court recognized as the executor of the murders of three residents of Nikopol, was sentenced to life imprisonment, Albert Rokhkin, as a client of the killer, was sentenced to 15 years in prison. Artem Chernysh, whom the court recognized as an accomplice in the killings, was sentenced to 6 years in prison, of which he had already served 2 years, Julia Kishinskaya was sentenced to probation, but spent two years in prison.

After the verdict was announced, the defense considered that the court had neglected a number of facts and expert examinations. Lawyers appealed to various human rights organizations, thanks to which an alternative investigation was carried out, which uncovered a number of new crimes. According to the results of this investigation the case was fabricated by the police. In one episode of the murder of a resident of Nikopol, Andrei Mikitenko, it turned out that the scam with the apartment and the disappearance of Andrei Mikitenko had been planned exactly two years before. The former relative received fake documents, on the basis of which she managed to take possession of the apartment of Andrei Mikitenko allegedly killed in 2008. The corpse itself, found on July 17, 2008 near Kirillovka, is in fact not identified either by fingerprints or by DNA. The whole accusation was based on the sincere testimonies of Alexander Streletsky and Artem Chernysh. By the way, A. Chernysh repeatedly changed the testimony and in February 2016

completely abandoned the previous testimony.

The victim, who had given false evidence in court for 6 years, disappeared. The defendants accused a prosecutor of “protecting” fraudsters and police officers who were convicted of other crimes. At the last session, the prosecutor demanded the maximum term for the defendant Albert Rokhkin, after the main witness did not identify in the photographs his brother Andrei Mikitenko, who was being killed in the case.

The course of the hearing. At this hearing, Streletsky’s statements and the petition of the defense were considered, convicts Alexander Streletsky and Albert Rohkin, prosecutor Uzun V.K. and lawyer Pletskaya Yu.V., panel of judges and jurors were present.

Convict Streletsky read out a statement asking to investigate the facts cited in the statement and admit that Svetlana Mikitenko could not be recognized as a victim and asked to establish her witness status.

The court did not satisfy this statement, explaining to the convict that in the sentence, which had gained legal force, Mikitenko was recognized as a victim, and in this proceeding, when considering the application for review of the sentence due to newly identified circumstances, the issues of changing the statuses of the parties are not considered. Court also recommended, in the event of the annulment of the verdict and consideration of the case again, to re-submit this application.

Streletsky’s lawyer filed a request for a posthumous forensic molecular genetic examination, arguing that during the sentencing and at the moment there is no appropriate and permissible evidence that the body of the person who was killed belongs to Andrei Mikitenko, as well as in the case file information that confirms the inconsistency and contradictions of information whose exact corpse was found in the village Limanskoe.

The defense drew attention to the inconsistency in the two expert opinions of the information on the height and size of the feet of the corpse, moreover, in one of the examinations the name of the other person was indicated – A.M. Mykolenko, and also there is no information about the presence of a scar on the body.

In addition, the ex-wife did not confirm that it was her husband in the photographs of the deceased, since she believed that her husband had a leaner body, the man consumed alcohol and that he had a different tattoo design. The lawyer drew attention to the fact that the case file contains black and white photographs that make it impossible to determine the color of the victim's hair and the matching color of the tattoo. A great emphasis was placed on the court that in one of the identification protocols it was described that the corpse was badly burned. Thus, it is not clear how two fingerprints appeared in the case materials from burnt limbs.

In addition, the lawyer provided information that the credit history of the injured Mikitenko Andrey is located in the Privatbank branch, and strangely enough after his death another loan was taken from the words of the bank's security service, but the lawyer's request was refused by the bank referring to the client's personal data. Thus, she believes that either Mikitenko Andrey took a loan or someone used fake documents. In this connection, she wants to submit a request for temporary access to the documents of the loan file of the victim.

She also drew the attention of the court that in the case file there are two act records of death with different dates, one of an unknown person and one Mikitenko Andrey, the question arises: why in the case file there is information about two act records of death.

The lawyer stated that in the materials of this case there is a massive falsification of documents, and the consequence is a life sentence of two people and, according to the lawyer, these facts are doubtful, not related to each other and illiterate falsified by the investigation and that the fact of the death of Andrei Mikitenko was not proved, in general it is not known whose body is buried.

Moreover, Andrei Mikitenko's wife still does not have information on where her husband's corpse was buried and did not give any explanations before. The case file does not contain the original protocol for identifying a corpse, medical certificate and death certificate of Andrey Mikitenko.

Summing up, the lawyer filed a petition for an examination and stated the questions that need to be put to the experts about the existence of family ties with the corpse, which was buried in the cemetery near the village of Kirilovka, allegedly belonging to Andrei Mikitenko and his uncle, Puzikov. She emphasized that the latter gave goodwill and consent to such an examination. She requested an examination to determine family ties with the daughter of the injured Mikitenko Svetlana, but she emphasized the court, to conduct an examination only with the consent of the parties and requested that the corpse be exhumed. Convicted Streletsky A.P. supported the motion.

The prosecutor objected to this petition, arguing that this question had already been raised by experts during the trial in the trial court and it had already been established that the skull belonged to Mikitenko, and in expert conclusion No. 105 it had already been established that a technical error had been made in the initials. In addition, the defense cannot clearly indicate the burial place of this person, and that it is impossible each time to dig all graves and conduct an examination.

Convict Albert Rokhkin drew attention to the fact that the case has been dragging on for 12 years and that the defense is paying attention to the fact that the corpse's skull was compared with photographs, and that the photographs were not of Andrei Mikitenko, and that the investigators concealed information about the presence of Andrei Mikitenko's sibling, wife and child, whose presence they learned only through journalistic investigations.

After meeting in the deliberation room, the court decided to refuse the application for an examination in accordance with the requirements of chapter 34 of the Code of Criminal Procedure of Ukraine, since the court was not empowered to collect evidence during the proceedings due to newly discovered circumstances. The collection of evidence may take place during a new review of criminal proceedings in the event of a cancellation of a sentence due to newly discovered circumstances.

Convict Streletsky Alexander told the court

that the case file contained a number of audio and video recordings that were not to be considered in the court of first instance, but the verdict indicated that the evidence was assessed as admissible and appropriate. He also filed a motion to establish by the court the fact that there is no technical record of the fixation of some court hearings. The court explained to the convict that the request would be considered in the deliberation room upon the adoption of the main decision.

After that the court invited the parties to proceed to the debate. There were no objections to the parties. Providing participants in the trial with the opportunity to prepare for the debate, the court announced a break until April 21, 2020.

In order to respect the right to a fair trial, experts from the International Society for Human Rights will continue to monitor this trial.

3.59 The trial of Irina Sukhanova

Monitoring the case of Irina Sukhanova (11.11.2020 and 11.25.2020)

On November 11 and 25, 2020, preparatory hearings were held in the Shevchenko District Court of Zaporozhye in the resonant case of Sukhanova I., the owner of an illegal kindergarten in an apartment, accused of premeditated murder of a little child (paragraph 2, part 2, article 115 of the Criminal Code of Ukraine). For the murder of a one-year-old girl, the teacher faces life imprisonment. The woman does not consider herself guilty, but CCTV cameras recorded the woman's violence against the girl. In order not to hear the crying of the child, the teacher put a pillow over her face.

The court sessions were held with the participation of the prosecutor, the accused, her defense lawyers, the victims and their representative. The hearings were held with the participation of two judges: Dmitriuk O., Schastlivaya E.

To prevent the spread of respiratory disease COVID-19 caused by the SARS-Co V-2

coronavirus, by order of the chairman of the Shevchenko District Court of Zaporozhye No. 5 dated September 25, 2020, the court introduced restrictive preventive and anti-epidemic measures for the quarantine period, including restricting access in court sessions of persons who are not participants in court sessions.

Therefore, the monitoring was carried out using an online broadcast of the court session on the website of the Judicial Power of Ukraine.

The course of the trial on 11.11.2020. In this court session, the main composition of the jury was determined. During the hearing, the jury was asked questions about circumstances that would make it impossible to consider the case or interfere with its consideration.

At the hearing, the prosecutor filed a motion to disqualify the juror Ryabchuk N., since she is the wife of juror Ryabchuk V., who is also included in the jury in this criminal proceeding.

The representative of the victims, whose position was supported by the victims, did not object to the satisfaction of the prosecutor's motion. At the same time, he announced the disqualification of the juror Ryabchuk V. on the basis of paragraph 4 of part 1 of article 75 of the Criminal Procedure Code of Ukraine (the presence of circumstances that raise doubts about his impartiality) in order to prevent violations - paragraph 4 of part 2 of article 386 of the Criminal Procedure Code of Ukraine (the jury is obliged not to communicate without the permission of the presiding judge with persons who are not part of the court regarding the essence of the criminal proceedings and the procedural actions carried out during it).

The defense lawyers and the accused left this request to the discretion of the court.

Defense attorney Budilko P. announced the recusation of the juror Bulygina T., since the latter is a practicing psychologist and this circumstance, if there are requests for the appointment of appropriate examinations in this criminal proceeding, may affect the adoption of procedural decisions.

The accused asked to resolve the issue of

disqualification of the jury Bulygina T. at the discretion of the court.

The prosecutor, the representative of the victims and the victims objected to the disqualification of the jury Bulygina T., referring to the lack of motivation and the absence of grounds determined by Article 75 of the Criminal Procedure Code of Ukraine.

The jury, who was challenged, explained that they have no relationship with the participants in the proceeding and are ready to fulfill their duties. The jurors Ryabchuk V. and Ryabchuk N. confirmed that they are spouses.

Having heard the participants in the trial, the court considered that the petition of the prosecutor and the representative of the victims should be satisfied. In the Court's opinion, this follows from the practice of the European Court of Human Rights. In accordance with Article 9 of the Criminal Procedure Code of Ukraine, the most important issue is the administration of justice by an independent and impartial court and the confidence that the courts must instill in the public in a democratic society. When providing an assessment of the impartiality of the court, it is necessary to distinguish between subjective and objective aspects.

In substantiating its position, the national court referred to the decisions of the ECtHR: "Gausschildt v. Denmark", "P'ersak v. Belgium", "Fey v. Austria", "Bochan v. Ukraine", where it is stated that the existence of impartiality for the purposes specified in paragraph 1 of article 6 of the Convention should be determined on the basis of a subjective criterion, in the context of which the personal convictions and behavior of a particular judge should be taken into account, and means the need to establish whether the judge in a particular case had any personal interest or bias, and on the basis of an objective criterion in the context of which it is necessary to establish whether the court and, among other aspects, its composition, provided sufficient safeguards to rule out any reasonable doubt about its impartiality.

At the same time, the ECtHR warns that only the doubts of a "sensible observer" that the court is independent and impartial may

have a certain value in understanding the provision of citizens' right to a fair trial ("Feranteli and Santangelo v. Italy", "Housechildt v. Denmark", "Wetstein v. Switzerland").

The court took into account that the jurors Ryabchuk N. and Ryabchuk V. are spouses and, by virtue of the provisions of part 2 of article 75 of the Criminal Procedure Code of Ukraine, they cannot be together in the composition of the court that carries out the proceedings, and in case of satisfaction of the challenge to one of them, may give an outside observer an impression of the jury's bias in the consideration of this case, which is the basis for satisfying the requests of the prosecutor and the representative of the victims.

Considering the statement of defense attorney Budilko P. about the challenge of the jury Bulygina T., the court proceeded from the following: in order to challenge the jury, it is necessary to substantiate the existence of circumstances that objectively may indicate a possible bias. The circumstances that were used as the basis for the defense lawyer's challenge must be proven. The challenge must be motivated, indicating the relevant arguments, evidence confirming the existence of grounds for the challenge. If it's not motivated, this is the basis for refusing to satisfy it.

The court considered that the defense lawyer's argument that the juror Bulygina T. is a practicing psychologist, which may affect procedural decisions, cannot be considered as motivated. The lawyer's application was not satisfied by the court.

The course of the trial on November 25, 2020. In accordance with Article 388 of the Criminal Procedure Code of Ukraine, the jury, who is involved in the consideration of criminal proceedings, was sworn in and the court explained to them their rights and obligations.

After that, the mixed panel of the jury moved to the stage of the trial, and the prosecutor Zhulay S. read out the indictment.

The defense attorney of the victims Mamedov T. filed a motion to recover from the accused moral damage in the amount of UAH 800,000.00 in favor of each parent of the deceased child.

The court also considered and satisfied the prosecutor's petition to extend the term of the accused's detention for 60 days. After that, at the request of one of the lawyers of the accused Sukhanova I., a break was announced to familiarize herself with the case materials.

3.60 The trial of Irina Sukhorukova

Monitoring of the case of Irina Sukhorukova (hearing on September 30, 2020)

On September 30, 2020, a preparatory hearing on the resonant case of Irina Sukhorukova, the owner of an illegal kindergarten, equipped in a three-room apartment, was held in the Shevchenkivsky District Court of Zaporozhye. The woman is accused of premeditated murder of a one-year-old child (clause 2, part 2, article 115 of the Criminal Code of Ukraine). Irina Sukhorukova faces 15 years or life imprisonment. Despite the fact that she does not consider herself guilty of the death of the child, Surveillance cameras recorded the woman's violence against the girl. In order not to hear the crying of the child, the teacher put (or tied) a pillow on her face.

The court session was held with the participation of the prosecutor, the accused, her defense lawyers, the victims and their representative.

The course of the trial. At the beginning of the hearing, the prosecutor asked the court to schedule the case for trial and filed a motion to extend the detention of the accused, which was motivated by the fact that she was reasonably accused of committing an especially grave crime, there was a risk of her escape, illegal impact on victims and witnesses. These factors, according to the prosecutor, should be taken into account when deciding whether to choose a measure of restraint in the form of detention.

The victims and their representative supported the position of the prosecutor and asked to take into consideration also civil claims.

The defender of the accused, attorney P.V.

Budilka, asked to return the indictment to the prosecutor, arguing that the act does not comply with Article 291 of the Criminal Procedure Code of Ukraine, since the wording of the accusation does not correspond to the qualifications of the accused's actions, the accused did not understand the essence of the accusation, it does not indicate the form of guilt, the motives and degree of implementation of the criminal intent of the incriminated criminal offense, and also challenged the prosecutor A.S. Zhulay, arguing that she did not have the appropriate powers, that the prosecutor was personally interested in the unilateral consideration of the case due to career motives. The lawyer also pointed out that, in his opinion, the pre-trial investigation in the Shevchenkivsky district was conducted ineffectively, he referred to the fact that the Internet contains information about the personal interest of the prosecutor Anna Zhulay and her family ties with the chairman of the court. This information has not been confirmed by any document.

Also, the defender of the accused objected to the extension of the measure of restraint in the form of detention and asked to change the measure of restraint to house arrest.

The defendant agreed with the position of her lawyers and filed a motion for the criminal proceedings to be examined by a jury consisting of two professional judges and three juries.

Having heard the opinion of the participants in the proceeding, having checked the compliance of the indictment with the requirements of the procedural law, the court came to the conclusion that the defense lawyer's request to return the indictment to the prosecutor is not subject to satisfaction, as well as the challenge to the prosecutor, due to the fact that the applicant has not presented convincing arguments and evidence that would indicate the existence of circumstances that are grounds for challenging the prosecutor, and the powers of the prosecutor in this proceeding are confirmed by the relevant decisions of the heads of the prosecutor's office, information about which is reflected in the register of pre-trial investigation materials.

The court decided that the case will be con-

sidered by a common panel with the participation of a jury, and the circumstances of the case do not require a trial in closed court session.

When deciding on the extension of the measure of restraint against the accused Sukhorukova, the court took into account the existence of a reasonable suspicion, as well as information that Irina Sukhorukova has a permanent place of residence, which coincides with her registration, has children, including minors. The court also considered the risk of continuing the accused criminal activity as unlikely, since Irina had not been previously convicted, is a senior citizen, that is, she is adapted in society, has a source of income.

At the same time, the court agreed with the arguments of the prosecution that the possibility of imposing a sentence of imprisonment for a long term may induce the accused to take actions in order to prevent the establishment of the truth in the case, to influence the victims and witnesses.

When considering this petition, the court concluded that the stated risks of the defendant's escape, the possibility of illegal influence on victims and witnesses, even after the completion of the pre-trial investigation, did not diminish and continue to exist, which is the basis for refusing to change the measure of restraint of the accused to house arrest.

The Court, taking into account the provisions of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the practice of the European Court of Human Rights, according to which restrictions on the human right to liberty and security of person are possible only in cases provided for by law according to the established procedure, as well as the facts that the European Court of Human Rights has repeatedly emphasized and that the court by its decision must ensure not only the rights of the suspect, but also high standards of protection of civil rights and interests, extended the period of detention by 60 days.

The court accepted for consideration the civil claims of the victims for compensation for moral damage caused as a result of a criminal

offense.

3.61 The trial of Andrei Tatarintsev

Monitoring the case of Andrei Tatarintsev (session 03/20/2020)

Monitoring the case of Andrei Tatarintsev (session 03/20/2020) On March 20, 2020, an open court hearing was held in the Kuybyshevsky District Court of the Zaporizhsky Region in the case of businessman Andrei Tatarintsev, who is charged with committing crimes under Part 1 of Art. 258-3, p. 5, art. 27, part 2, article 28, part 2, article 437, part 1 of the article 438 of the Criminal Code of Ukraine (financing of a terrorist organization, aiding in the conduct of an aggressive war, cruel treatment of prisoners of war and civilians).

According to the lawyer, Andrei Tatarintsev's accusation is that in 2014-2015 he was trading gasoline at a tank farm located in the territory of the Eastern Ukraine and transferring it to armed persons, allegedly military men of the unrecognized republics of the "DPR/LPR", as well as transferring fuel to the ambulance station and other facilities in the territory of the "DPR/LPR".

Experts from the International Society for Human Rights continue to monitor this trial.

The ISHR observer recorded that despite the quarantine measures introduced by the government in the context of the coronavirus epidemic, as well as the recommendations posted at the entrance to the court, the panel of judges, the court clerk and the convoy did not have masks. Also, the mask was not given to the accused, who, according to him, was transported in a car that did not pass through disinfection. Also, according to information provided to the ISHR observer by Tatarintsev and the convoy's staff, no sanitary measures are taken in the pre-trial detention center, the prisoners are not provided with masks and disinfectants, the pre-trial detention center's medical unit does not examine the prisoners either when they go to court or when they return to the pre-trial detention center, which

can expose a large number of contained in tight and poorly ventilated areas to the risks of coronavirus infection.

Given that the accused suffers from severe diabetes, and therefore is at risk for coronavirus, this situation can be regarded as a violation of human rights (Article 3 of the European Convention). Thus, the decision of the ECtHR in the case of “Kudla v. Poland” (No. 30210/96, § 94, ECHR 2000-XI) states that detainees should be held in conditions compatible with respect for their human dignity, and that the nature and method of implementation of the measure the detainees were not in difficulty which intensity exceeds the inevitable level of suffering inherent in imprisonment.

Before the trial, Andrei Tatarintsev informed his lawyer about his poor health, that he had not been given sugar-lowering pills, and instead of a dietary meal, he had a torn bag with cookies, butter, white bread and other foods that are contraindicated for diabetes. In addition, the accused claimed that the last measurement of sugar was made to him in the courtroom two months ago, and since then the doctor of the medical unit did not even come to him. Attorney Vladimir Lyapin filed a request for an ambulance. However, the court, having conferred on the spot, decided that Tatarintsev cannot take part in the hearing in this state of health, and ignored the request to call an ambulance. Several attempts by the lawyer to recall the need for medical care were again ignored, and the judge, Malevanny V.A. stated the need to consider extending the measure of restraint.

ISHR experts note that such actions by the state may violate article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which states that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment” (case of “Beketov v. Ukraine”), No. 44436/09, § 76, ECHR 2019-II). Also, according to the decision in the “Kalashnikov v. Russia” case (No. 47095/99, § 95, ECHR 2002 VI), the state must ensure that a person is detained in conditions consistent with respect for human dignity, so that the nature and method

of execution of the measure of restraint does not cause the person suffering or difficulty, the intensity of which exceeds the inevitable level of suffering inherent in detention. In addition, the court is not the first time, having decided to postpone the hearing due to the impossibility of Tatarintsev’s participation in it for health reasons, continues the hearing to hear the petition of the prosecution to extend the measure of restraint.

Lawyer Lyapin V. challenged the presiding judge Malevanny V.A. on the grounds that the judge by his actions endangers the life of the defendant. Returning from the deliberation room, the board rejected the challenge without giving any reason. The full text of the decision, according to the judge, will be presented later. Then the lawyer declared the second challenge - to the judge Khodko V.N., having informed that he would provide the argument of the challenge in writing at the next hearing. The challenge was rejected. We consider it necessary to pay attention that all this time Andrei Tatarintsev was without medical assistance. Judge Malevanny V.A. said that an ambulance would be called only when the board retired to the deliberation room to make a decision to extend the measure of restraint. An ambulance paramedic who appeared in the courtroom over time recorded sugar at 12.1 with a normal rate of 5.5 and high blood pressure. The paramedic was questioned and affirmed that Tatarintsev needed to visit endocrinologist, timely medication and dietary intake. To help the patient, namely, to organize control of sugar, is possible only in a hospital. The court released the paramedic and made no decisions to provide Tatarintsev with medical care, but again ignored the requests of the lawyer and the accused himself.

In the decision of the ECtHR in the case of “Salakhov and Islyamova v. Ukraine” (No. 28005/08, § 129, ECHR 2013-III) “The Court emphasizes that Article 3 of the Convention imposes an obligation on the State to ensure, taking into account the practical requirements of imprisonment, that health and the well-being of the prisoner was adequately guaranteed, including by providing him with the

necessary medical care . . . One of the important factors for such an assessment is a drastic deterioration in the state of health of a person in places of detention, which inevitably casts doubt on the adequacy of the medical care available there. . .” In addition, the ECtHR has repeatedly indicated that the provision of necessary medical assistance to persons in places of detention is the responsibility of the state (“Wuhan v. Ukraine”, No. 30628/02, § 72, ECHR 2008-XII).

The prosecutor who participated in the hearing via videoconference read out a request for an extension of the measure of restraint in the form of detention. ISHR experts express concern that the prosecutor once again repeated the same arguments in his application (the gravity of the charge, the presence of social ties in uncontrolled territory and in the Russian Federation, the possibility of pressure on witnesses) without substantiating or proving in detail, but only stating the existence of risks of non-fulfillment by the defendant of their procedural obligations and the inability to avoid these risks with the help of milder measures, which is a prerequisite for detention (Articles 176-178, 183 of the Code of Criminal Procedure).

According to the legal position of the ECtHR in the case of “Todorov v. Ukraine” (No. 16717/05, § 62, ECHR 2012-IV), there must be exceptionally good reasons for extending detention. Moreover, as the Court points out, only the gravity of the crime, the complexity of the case and the seriousness of the charges cannot serve as a basis for extending such a measure. In addition, Art. 184 of the Code of Criminal Procedure of Ukraine expressly states that the prosecutor’s application for the application of a measure of restraint should contain a statement of circumstances, based on which the prosecutor concluded that there are one or more risks noted in his application, and links to materials that confirm these circumstances. Once again, the prosecutor did not confirm the presence of risks with either written evidence or witness testimony.

The court decided to leave Andrey Tatarintsev in custody for another 60 days.

The International Society for Human Rights notes that the fact that other measures of restraint were not considered by the court when extending detention in custody may indicate a violation of paragraph 3 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“Buryaga v. Ukraine” 27672/03, § 62, 2010-X) - the right to trial within a reasonable time or to release pending trial. Release may be subject to guarantees of attendance of the court i.e. the right to consider an alternative measure of restraint.

Monitoring the case of Andrei Tatarintsev (session 04/30/2020)

On April 30, 2020, a hearing was held in the Kuybishevsky District Court of the Zaporozha Region in the case of Andrei Tatarintsev, accused of participating in a terrorist organization, aiding in conducting an aggressive war by prior conspiracy by a group of people, and cruel treatment of prisoners of war and civilians. In fact, the accused after 2014 continued to carry out entrepreneurial activities in the territory bordering the uncontrolled by the Ukrainian government territories of the Eastern Ukraine (trading in diesel fuel from a tank farm).

Experts from the International Society for Human Rights continue to monitor this lawsuit.

Before the trial, Andrei Tatarintsev informed his lawyer that he was given dry ration (a sweet cookie and bread and butter) for breakfast in the pre-trial detention center and that he could not eat these products - they are not dietary food for diabetes. Accordingly, he was not able to take sugar-lowering pills, which are used simultaneously with food. The consequence of this was poor health, high blood pressure, dizziness and dry mouth.

The course of the trial. At the beginning of the trial, the court announced that the defendant had provided the legal aid agreement with another lawyer, V. Kravtsov, who asked court to be admitted to the criminal proceedings as an advocate and to declare a short break for the possibility of confidential communication with his client. The participants in the trial

did not object, and the panel of judges on the spot decided to satisfy the motion.

After the break, the new defender of the accused filed a petition for the court to call an ambulance, so that the doctors once again testify to the state of health of the accused. The court clarified with the accused about his state of health and decided to call an ambulance team.

Ambulance paramedic told the court that Andrei Tatarintsev had high blood pressure of 160/95 at a normal rate of 120/80 and high sugar 11.3 at a rate of 5.5, a moderate health condition and he urgently needed to take dietary food and take sugar-lowering pills, and continue to follow a diet, otherwise serious consequences are possible, including a diabetic coma. When asked by lawyer Vladimir Lyapin, the paramedic confirmed that cookies and bread and butter are not suitable as diet food.

Defender V. Kravtsov, with the consent of the accused, requested that the patient's information sheet with the diagnoses: "Vegetative-vascular dystonia of the hypertonic type, type 1 diabetes mellitus", which issued an ambulance paramedic, be included in the case file. He filed a motion to stop the trial, considering the severe long-term illness of Andrei Tatarintsev, guided by Article 335 of the Code of Criminal Procedure of Ukraine, due to the fact that criminal proceedings have not been examined for more than 20 months on the merits due to the health status of his client. The second lawyer filed a request for the inclusion of another patient information sheet confirming the defendant's illness.

Attorney Vladimir Lyapin again drew attention to the fact that in such a difficult health state it is impossible to hold a court session, that the State continues to ignore the implementation of the 2018 decision of the Kuibyshevsky court on providing adequate treatment and dietary nutrition for the accused in jail. He reminded that diabetes is a disease that injures the blood vessels of the brain and if pills are not taken in a timely manner, serious consequences are possible, and he supported the request of his colleague.

The enforcement of court decisions is part of the right to a fair trial under Art. 6 of the European Convention on Human Rights. This is also a necessary condition of the rule of law enshrined in Art. 8 of the Constitution of Ukraine.

There is no point in justice if court decisions are not enforced. This greatly deepens the distrust to the judicial branch of government and to the government as a whole.

The European Court of Human Rights has repeatedly drawn attention to this problem. It admitted the violation of the right to a fair trial in the case of "Yuri Nikolaevich Ivanov v. Ukraine".

The prosecutor stated that the defense was abusing its rights, delaying the consideration of the case and trying to avoid any consideration of the indictment by any action. In his opinion, the accused must be provided with the necessary food and medicines and continue the trial. The defense confirmed that it is necessary to postpone the examination of the indictment on the merits each time due to the poor health of Andrei Tatarintsev, which is confirmed by the ambulance paramedic at each hearing, given that the accused was not fed and did not provide necessary dietary food.

The court ruled to reject the application.

The ECtHR reiterates that Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms enshrines one of the fundamental values of a democratic society. In absolute terms, it prohibits torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or behavior of the victim ("Labit v. Italy", Grand Chamber).

The new defense attorney filed a motion to postpone the trial to another date due to the state of health of the client and his inability to express his opinion on the issues raised, as well as with the hope that the state of health of the accused could improve.

On the positive side regarding the observance of the principle of reasonableness of the time limits for the consideration of the case, it can be noted that after agreeing with all participants in the trial, the court set sev-

eral dates for judicial review in the coming months on 05.08.2020, 06.10.2020, 06.18.2020 and 07.01.2020.

Monitoring the case of Andrey Tatarintsev (sessions 05.08.2020 and 06.10.2020)

On May 8 and June 10, 2020, in the Kuibyshevsky District Court of the Zaporozhye Region, regular court hearings were held in the case of Andrey Tatarintsev, accused of participating in a terrorist organization, complicity in the conduct of an aggressive war by prior conspiracy by a group of persons, and cruel treatment of prisoners of war and the civilian population. Andrey Tatarintsev, after 2014, continued to carry out entrepreneurial activities (trade in diesel fuel from a tank farm) in area next to uncontrolled territory of Eastern Ukraine (ORDLO).

The course of the trial. At the very beginning of the session, which took place on May 8, 2020, the court gave the lawyer Vladimir Lyapin the word: "The Constitution of Ukraine declares that human rights and freedoms are the highest value. Today A. Tatarintsev, suffering from diabetes, was again not provided with dietary food. This time they did not even give an egg, only white bread and butter (which is not a dietary food with the diagnosis of A. Tatarintsev). I think this is torture. If the state considers that Tatarintsev is a prisoner of war, then it is necessary to ensure that he meets the standards of medical care, in accordance with the Geneva Convention. Since the Kuibyshevsky District Court made a decision to provide Tatarintsev with a dietary 5 meals a day, and the pre-trial detention center does not fulfill these requirements, I ask you to provide him with food in the courtroom." In order to study the provision of medical assistance to A. Tatarintsev, the lawyer filed a motion to request medical documents (journals, extracts, case histories, etc.) from the Volnyansky pre-trial detention center.

He also asked the court to briefly announce the indictment and establish the volume and procedure for examining the evidence, but before that he asked for a break in the hearing in order to provide the accused with dietary

food established by the decision of the same court, and which A. Tatarintsev never received in the pre-trial detention center and also to establish whether he is medically able to participate in the hearing. The prosecutor, in the mode of a video conference from the district court of Kiev, supported the defense's petition to announce the indictment, but opposed the announcement of the break.

The presiding judge granted the defense's petition in terms of reclaiming Tatarintsev's personal file from the pre-trial detention center, and refused to provide food, arguing that the court did not have a catering facility and a specially designated place for eating and emphasized that the court would again send to the pre-trial detention center the decision to secure Tatarintsev A. dietary food.

After that, the prosecutor briefly announced the indictment, and the court asked the accused if he pleaded guilty. Accused A. Tatarintsev, through the glass box said that he did not plead guilty, did not understand what he was accused of, and why he had been in jail for 2 years 8 months.

Then the court moved on to the question of determining the volume and procedure for examining evidence. The prosecutor proposed the following procedure: examination of audio and video recordings, then interrogation of the victims and one available prosecution witness, then examination of material evidence and interrogation of the accused.

On the remark of the lawyer V. Kravtsov that the prosecutor, according to the norms of Article 349 of the Criminal Procedure Code, must list each of the evidence, the prosecutor replied that he had a list of evidence in writing, while attaching the text to the monitor screen on which the video communication was going, and adding that the evidence would take a long time to read, so he would send a list of evidence to the court and the defense. The lawyer V. Kravtsov objected that if the prosecutor cannot announce the list of evidence, then he must be given time to comply with the requirements of the Criminal Procedure Code.

The presiding judge confirmed that the pros-

ecutor needs to read out the list of evidence or send it by mail to the court and the defense for review. The prosecutor immediately announced that he was asking the court to postpone the hearing. The judges decided to announce a break in the proceedings and moved on to the issue of extending the measure of restraint for A. Tatarintsev.

The prosecutor, in his petition to extend the detention of the accused, referred to the evidence indicated by the investigator in the indictment and listed standard risks, as in his previous petitions.

The lawyer V. Lyapin drew the court's attention that the prosecutor violates the provisions of Article 198 of the Criminal Procedure Code, according to which the findings of the investigating judge on the selection of a measure of restraint indicated at the pre-trial investigation, the conclusions on the essence of the accusation do not have prejudicial significance during the trial, and the evidence referred to by the prosecutor has not yet been examined by the court. The presiding judge agreed that at the moment the prosecutor could not provide them.

At the same time, the judicial collegium did not comment on the objections of the lawyers in any way, that, on the basis of the decisions of the ECtHR, over time, the risks that form the basis for the election and repeated prolongation of the measure of restraint are leveled.

Lawyer V. Lyapin once again asked to appoint a bail to the accused Tatarintsev, since the prosecutor has no evidence of the need to extend Tatarintsev's detention in the pre-trial detention center. However, the court, after hearing the opinion of the prosecution and defense, and referring to the risk of escaping from the court, once again extended the detention of the accused Tatarintsev for a period of 2 months.

The European Court of Human Rights notes that national courts must first and foremost ensure that, in a given case, an accused's pre-trial detention does not exceed reasonable time. To this end, they must, taking due account of the principles of the presumption of innocence, examine all the circumstances of the case that

may confirm or deny the existence of a public need that justifies deviations from the requirement of respect for personal freedom, and indicate this in their decisions to extend of the period of detention. The question of whether there has been a violation of paragraph 3 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms is up to the Court to decide on the basis of the reasons given in those judgments ("IA v. France", para. 102).

According to paragraph 3 of Article 5 of the Convention, after a certain period of time, it is the existence of reasonable suspicion that does not justify the deprivation of liberty, and the courts must give other grounds for extending the detention ("Borisenko v. Ukraine", para. 50). Moreover, after a certain time has elapsed, reasonable suspicion does not in itself justify the deprivation of liberty, the judicial authorities must present other grounds for further detention, which must be clearly indicated ("Yeloyev v. Ukraine", para. 60; "Kharchenko v. Ukraine", para. 80).

The Court often found a violation of paragraph 3 of Article 5 of the Convention in cases where national courts continued detention, referring mainly to the gravity of the charges and using formulaic language, without even considering specific facts or the possibility of applying alternative measures ("Kharchenko v. Ukraine", paras. 80-81; "Tretyakov v. Ukraine", para. 59).

The European Court of Human Rights has frequently found violations of Article 5 § 3 of the Convention, on the basis that, even with long periods of detention, domestic courts frequently refer, if at all, to the same set of grounds throughout the period of detention, although Article 5 § 3 of the Convention implies that, after a certain period of time, reasonable suspicion does not in itself justify the deprivation of liberty, and the judicial authorities are obliged to provide other grounds for further detention ("Kharchenko v. Ukraine" No. 40107/02, para. 99, "Svershov v. Ukraine" No. 35231/02, paras. 63-65).

On June 10, 2020, in the Kuibyshevsky District Court of the Zaporozhye Region, regular

court hearing was held in the case of Andrey Tatarintsev, accused of participating in a terrorist organization, complicity in the conduct of an aggressive war by prior conspiracy by a group of persons, and cruel treatment of prisoners of war and the civilian population. Andrey Tatarintsev, after 2014, continued to carry out entrepreneurial activities (trade in diesel fuel from a tank farm) in the territory bordering ORDLO.

Before the start of the session, A. Tatarintsev handed over to the lawyer V. Lyapin the ration given to him by the escort.

He also told the lawyer that due to the fact that one convoy vehicle serves four districts of the region, and in order to be in time for this meeting at 2:00 pm, Tatarintsev was taken out of the pre-trial detention center at 7:30 am, while this ration and some three tablets, without specifying what it is and how to take them.

Taking this into account, he did not take them, but decided to show the court what kind of "treatment" he was receiving; he also did not eat the food given out, since these products were contraindicated for him.

During the hearing, lawyer V. Lyapin showed the judicial board the pills and food that had been issued in the pre-trial detention center in the morning: an egg, bread and butter, sweet biscuits - for A. Tatarintsev these are non-dietary foods that are contraindicated for him due to the presence of diabetes mellitus and blood sugar levels.

Then he asked to call an ambulance to establish whether his client A. Tatarintsev was able to take part in the hearing, given that he had not eaten anything since the morning, and due to the abnormal heat, he was taken to court for two and a half hours in the closed convoy car. The prosecutor, who took part in the hearing via video conference from the court in Kiev, objected, but the court announced a break for the call and arrival of an ambulance.

The arrived medical team measured A. Tatarintsev's blood pressure and sugar level, stating that the pressure was "almost normal," and the sugar level was 9.9, while the norm was 5.

Lawyer V. Lyapin once again drew the attention of the judicial board that the pre-trial detention center does not comply with the court decision on providing Tatarintsev with dietary food and proper medical examination and assistance, taking into account his diagnosis of type II diabetes, and the court's failure to act is the lack of control over the implementation of its own decision, and in a situation of impossibility of its implementation, choosing another measure of restraint, instead of detention, in which proper food and treatment of the patient Tatarintsev is not provided - which is a gross violation of Article 3 of the Convention (on the prohibition of torture and degrading treatment of the accused).

The lawyer appealed to the court with an oral motion - to take measures of judicial control and influence in relation to the employees of the pre-trial detention center, and to establish the fact that the rights of the accused A. Tatarintsev to proper examination, treatment and food are violated, to which the judge said that this is not within the competence of the court, and to the question of a lawyer, whose competence is this, the presiding judge said that it is not a court, but the prosecutor's office exercises appropriate control over the observance of the rights of the accused in places of execution of sentences and detention.

Further, the court proceeded to discuss the prosecutor's request to establish the volume and procedure for examining evidence. The court found out that the prosecutor sent this petition to the address of the court and lawyer V. Kravtsov, and to lawyer V. Lyapin he did not send this petition for review.

In this part of the proceeding, the court limited itself to reading the operative part of the petition, having satisfied it on the spot and agreeing with the procedure for examining evidence indicated by the prosecutor.

Also, lawyer V. Lyapin read out and submitted to the court a written petition prepared by the defense - to summon and interrogate 21 (twenty one) defense witnesses, with their addresses and necessary data, - after 1 (one) available witness on the part of the prosecution will be interrogate. The court granted this

request.

Then he moved on to the question that a letter from the branch of the Center for Health Protection of the State Penitentiary Service of Ukraine in the Zaporozhsky region from the 06/02/2020, to which are attached “logs of medical measures for Tatarintsev A.N.” - from 09.10.2018 to 05.21.2020.

The judge read out the list of documents attached to this letter and their brief content, which should convince the court and lawyers that “on paper” the documents concerning A. Tatarintsev are executed correctly and the accused receives proper food and medical care.

The court read out a certificate stating that A. Tatarintsev refuses to be examined, does not want to take tests. The court gave A. Tatarintsev the opportunity to object to the presence of this certificate and he said that the endocrinologist did not come to him, he passed the tests, but no one took them within three days, and those pills that were given to him, without examination and recommendations on reception, he really does not want to take.

And he is interested in examining and prescribing proper nutrition and treatment for him, moreover, he demands it, all 2 years and 9 months of his detention in a pre-trial detention center, he cannot achieve this from the state, in the existing system, in any way - as with the help of lawyers, and in the presence of journalists and observers from international human rights organizations.

After that, lawyer V. Lyapin appealed to the court with a request to make a ruling that information on how A. Tatarintsev was provided with dietary food on the day of the hearing on June 10, 2020, taking into account the fact that all participants in the proceeding and the court had the opportunity to ascertain what exactly was contained in the food ration given to A. Tatarintsev, who was escorted to the court. The court satisfied the lawyer’s statement.

It should be noted that in the case “Pivovarnik v. Ukraine” of October 6, 2016, the European Court concluded that Article 3 of the Convention was violated due to the fact that the pre-trial detention center adminis-

tration did not provide regular medical monitoring of the applicant’s state of health and did not develop an action plan to treating his disease. The applicant’s illness was not in an active stage, however, the pre-trial detention center administration found it was precisely the applicant’s health disorder. With this in mind, his condition was serious and required treatment. The applicant also received the prescribed treatment after a significant delay.

In its judgment in “Garumov v. Ukraine” of 6 June 2019, the Court considers that unjustified delays in the provision of medical care by the authorities to the applicant after his illness has been established, his failure to ensure that he is admitted to hospital for additional examination and inpatient treatment, and further deterioration of his health are sufficient indications of a serious failure by the respondent State to provide him with adequate medical assistance while in detention. This amounted to inhuman and degrading treatment, in violation of Article 3 of the Convention.

Monitoring of the case of Andrey Tatarintsev (session 08.27.2020)

On August 27, 2020, in the Kuibyshevsky District Court of the Zaporozhye Region, an open court hearing was held in the case of businessman Andrey Tatarintsev, who is accused of committing crimes under Part 1 of Article 258-3, part 5 of Article 27, part 2 of Article 28, part 2 of Article 437, part 1 of Article 438 of the Criminal Code of Ukraine (financing a terrorist organization, complicity in the conduct of an aggressive war, cruel treatment of prisoners of war and the civilian population).

According to lawyer Vladimir Lyapin, in 2014-2015, the accused traded gasoline at a tank farm located on the territory uncontrolled by the Ukrainian government, and was obliged by the armed persons (who represented themselves as the military of the unrecognized DPR / LPR republics) to transfer fuel to the ambulance station and other facilities.

Andrey Tatarintsev suffers from type 2 diabetes. During the monitoring of this trial, the ISHR repeatedly recorded that during the three years of detention, the accused did not

receive medical care and dietary food necessary for his illness.

Experts from the International Society for Human Rights continue to monitor this trial.

The hearing began with the fact that the presiding judge V.A. Malevanny informed about the absence of judge G.Y. Valigursky, which made it impossible to consider the case in essence. However, since on August 29 the term of the measure of restraint assigned to Tatarintsev expired, judge V.A. Malevanny decided to consider the issue of extending the measure of restraint alone, in accordance with the transitional provisions of the Criminal Procedure Code of Ukraine.

The lawyer V. Lyapin announced the challenge of the collegium. The defense lawyer explained that on August 21, 2020, endocrinologist Svetlana Tovstyga examined the accused in remand prison No. 11. As a result, a worsening of the patient's condition was once again recorded (varicose veins appeared on the legs, etc.), treatment and dietary food for diabetics were prescribed (table No. 9), however, over the 6 days that have passed since that moment, the medical unit of the remand prison did not follow the doctor's recommendations, in which the lawyer and the accused see signs of torture. The court has repeatedly passed rulings on the need to provide Tatarintsev with treatment and dietary nutrition, however, the implementation of the rulings is not monitored, measures of judicial control are ignored by the board, and the duty to guarantee the health and life of the defendant is not being fulfilled. In this regard, the lawyer believes that the court does not fulfill its procedural duties, is prejudiced and, accordingly, cannot pass a lawful and fair sentence.

The International Society for Human Rights draws attention to the position of the European Court, which says that unjustified delays in the provision of medical assistance by the authorities to the applicant after the diagnosis of his illness, the failure to provide him with hospitalization for additional examination and inpatient treatment and further deterioration of his health are sufficient signs of serious failure of the respondent State to provide him

with adequate medical assistance while in detention. This amounted to inhuman and degrading treatment, in violation of Article 3 of the Convention ("Garumov v. Ukraine", § 46). In addition, Article 6 of the Convention says that the implementation of court decisions is part of the right to a fair trial. It is also a necessary condition for the rule of law, enshrined in Article 8 of the Constitution of Ukraine.

Judge V.A. Malevanny, as well as prosecutor A.S. Kozakevich stated that the challenge of the panel of judges can only be considered collegially, therefore this will be done at the next hearing, and at the moment only the issue of extending the measure of restraint under Article 331 of the Criminal Procedure Code of Ukraine will be considered. However, the lawyer noted that before considering the challenge of the collegium, the court cannot perform any procedural actions, and since the challenge is considered collegially, it is necessary to wait for all members of the collegium to appear in the session. The postponement of consideration of the issue of challenge is not provided for by any article of the Criminal Procedure Code. Since the judge was going to move on to extending the measure of restraint without considering the challenge and did not respond to repeated calls by the defense not to violate the current legislation, lawyer Lyapin asked for a break in order to summon representatives of the National Police to the courtroom. No break was granted, and judge V.A. Malevanny announced the transition to considering a measure of restraint. Then the lawyer called the police right from the courtroom and asked for a break in order to meet law enforcement officers. He was again refused and then he personally left the courtroom. After that, the judge announced a break, since it is prohibited by law to consider the issue of extending a measure of restraint without the presence of a defense lawyer.

The rapid response group accepted statements from the lawyer and the defendant regarding torture in the courtroom (according to the doctor's recommendation, Andrei Tatarintsev had to take dietary food and prescribed medications 3 times by this time, but was not

provided with either one) and the violation of the Criminal Procedure Code by the judge. The investigator, who arrived later, seized rations (sugar cookies, white bread and peanuts), which the diabetic A. Tatarintsev received in the pre-trial detention center, for examination, and also promised to withdraw the video recording of the court session in order to establish the fact of violation of the law by the court.

Since A. Tatarintsev's health worsened, it was decided to call an ambulance. The paramedic recorded increased blood pressure (160X80) and more than doubled (than the norm) level of sugar (12.4). Since the ambulance is not provided with sugar-reducing drugs, he offered to take the patient to a medical facility. Despite the protests of the prosecutor, the court agreed with this and postponed the session to the next day, since the court agreed that the CPC does not allow considering the extension of the measure of restraint until the issue of the challenge of the collegium is resolved, which can only be done in the presence of all judges of the collegium.

The Court considers that it is the State's responsibility to detain persons in conditions that respect human dignity, including the provision of necessary medical assistance ("Kalashnikov v. Russia", § 95; "Wuhan v. Ukraine", § 72). A sharp deterioration in the state of health of a person in places of detention inevitably casts doubt on the adequacy of the medical care available there ("Salakhov and Islyamova v. Ukraine", § 129). Since the accused Andrei Tatarintsev has been reporting for a long time that he was not provided with the prescribed treatment and dietary food in the pre-trial detention center, and according to the results of the examination by an endocrinologist dated 08.21.2020, his condition worsened, experts of the International Society for Human Rights believe that a violation of Article 3 ECtHR ("No one shall be subjected to torture or inhuman or degrading treatment or punishment").

Monitoring the case of Andrei Tatarintsev (hearing 8.28.2020)

On August 28, 2020, in the Kuibyshevsky District Court of the Zaporozhye Region, an open trial continued in the case of businessman Andrei Tatarintsev, who is accused of committing crimes under Part 1 of Art. 258-3, part 5 of Art. 27, part 2 of Art. 28, part 2 of Art. 437, part 1 of Art. 438 of the Criminal Code of Ukraine (financing a terrorist organization, complicity in the conduct of an aggressive war, cruel treatment of prisoners of war and the civilian population).

Experts from the International Society for Human Rights continue to monitor this trial.

At the previous hearing, 08.27.2020, judge V.A. Malevanny planned to single-handedly consider the issue of extending the measure of restraint to Andrei Tatarintsev in accordance with the transitional provisions of the Criminal Procedure Code of Ukraine, since one of the judges of the collegium was on vacation. However, he could not do this, since lawyer V.Y. Lyapin announced the challenge of the entire collegium, and the court has no right to take any other actions until this issue is resolved. 08/28/2020, judge G.Y. Valigursky was recalled from vacation to consider a challenge.

In his speech, lawyer V.Y. Lyapin outlined the circumstances that raise doubts about the objectivity of the board. He drew attention to the fact that at the previous hearing it was once again found out that the accused, suffering from type 2 diabetes, is not provided with the treatment and diet recommended by the doctor. The defense lawyer asked to attach to the case statement from an endocrinologist and a certificate from the hospital in Belmak, where Andrei Tatarintsev was taken by an ambulance after the court hearing on August 27, 2020. The hospital doctors determined that the accused was in a state of moderate severity and needed constant medication according to the endocrinologist's discharge. However, at today's hearing, the accused was again given a bag with food that is strictly forbidden to use in case of diabetes mellitus and again did not provide the necessary medicines. The lawyer believes that the panel of judges is guided by

a certificate from the pre-trial detention center medical unit to permanently extend the exceptional measure of restraint, which says that Andrei Tatarintsev is provided with everything he needs. According to him, the court has not yet found out whether the official who signed the certificate is a specialist in the treatment of diabetes mellitus and what is actually given to Andrei Tatarintsev. This certificate is refuted by objective data, which were repeatedly established in the courtroom - explanations of the ambulance staff, the testimony of the convoy, the conclusions of endocrinologists who examined A. Tatarintsev both in the courtroom and in the pre-trial detention center. According to the last examination on August 21, his health condition deteriorated due to inappropriate treatment. Lawyer Lyapin said that the panel of judges pays attention exclusively to the arguments of the prosecution, including those that are not substantiated by anything, and the panel ignores the factual circumstances that are established in the courtroom completely.

In this regard, it is necessary to pay attention, according to the European Court, the government must provide reliable and convincing evidence that the accused received comprehensive and appropriate medical assistance while in custody (case “Savinov v. Ukraine”, no. 5212/13, paragraph 50, dated October 22, 2015).

In addition, V.Y. Lyapin drew attention to the repeated violation of the right to defense. At this hearing, as well as at the previous hearing, on August 27, 2020, Andrei Tatarintsev’s second defense lawyer, lawyer V. Kravtsov, was absent, however, the presiding judge, violating the norms of the Criminal Procedure Code, did not ask the defendant whether it was possible to continue the hearing.

According to the practice of the ECtHR, the right of a person accused of committing a crime to an effective defense by a lawyer is one of the fundamental characteristics of a fair trial (paragraph 51 of the judgment “Salduz v. Turkey”, no. 36391/02 of 11.27.2008). This right itself includes not only the right to the presence of a lawyer, but also the right to receive legal assistance as needed (paragraph

49 of the decision “Lagerblom v. Sweden”, No. 26891/95 of 01.14.2003; paragraph 89 of the decision “Galstyan v. Armenia”, No. 26986/03 of 11.15.2007).

The defense also called the behavior of the court unacceptable and biased, which at one of the previous hearings did not make any decision on the defense’s motion to recognize as obviously inadmissible a number of evidences from the prosecution, but gave the prosecutor time to establish the circumstances referred to in the petition. The lawyer claims that this is not provided for by any provision of the Criminal Procedure Code and will violate the principle of equality of parties in the process. The European Court considers that each party should be given a reasonable opportunity to present its evidence under conditions that do not place it at a disadvantage in relation to its opponent (“Avotins v. Latvia” No. 17502/07, paragraph 119 of 05.23.2016; “Dombo Beheer BV v. The Netherlands”, no. 14448/88, paragraph 33 of October 27, 1993).

The stated challenge was not accepted, the motivation of the court ruling is not known to the observer of the ISHR, since only the operative part of the ruling was announced at the hearing.

Then, in the order of Art. 331 of the Criminal Procedure Code of Ukraine, the collegium proposed to make a decision on the advisability of extending the measure of restraint to Andrei Tatarintsev in the form of detention and passed the floor to the prosecutor. Prosecutor Aleksey Kozakevich began to talk about the presence of risks that the defendant will hide from the court, since he has close social ties in the uncontrolled by the Ukrainian government city of Krasnodon (Sorokino) of the Lugansk region, will illegally influence witnesses, and will also be able to access material evidence in the case.

According to the legal position of the ECtHR in the case “Todorov v. Ukraine” (no. 16717/05, § 62, ECtHR 2012-IV), there must be extremely compelling reasons for the prolongation of detention. Moreover, as the European Court points out, only the gravity of the crime, the complexity of the case and the seriousness

of the charges cannot serve as a basis for extending such a measure. In addition, Art. 184 of the Code of Criminal Procedure of Ukraine directly states that the prosecutor's request for the application of a measure of restraint must contain a statement of the circumstances on the basis of which the prosecutor came to the conclusion about the presence of one or several risks noted in his request, and references to materials that confirm these circumstances. The ISHR experts express concern that in his speech the prosecutor, once again repeated the same arguments, without substantiating or proving in detail, but only stating the existence of risks of the defendant's failure to fulfill his procedural duties and the impossibility of avoiding these risks with the help of milder measures, which is a prerequisite for detention (Articles 176-178, 183 of the CCP).

The lawyer V. Lyapin lodged a protest, since he had previously registered a petition to change the measure of restraint in the court office, therefore it (within the framework of Art. 201 of the Criminal Procedure Code of Ukraine) should have been considered earlier. The defense lawyer also asked the prosecutor to provide written evidence of the existence of the risks to which he referred. The prosecutor replied that the evidence is partially already examined and not yet examined materials of the criminal case. The lawyer expressed surprise, since at the moment only the extract from the ERDR and the order on the appointment of a group of prosecutors were considered, which can in no way be evidence of the existence of a risk. It is impossible to refer to materials not yet considered directly by the court; they must be considered in the court session before making a decision. Nevertheless, the court stated that since the prosecutor believes that what he has said is enough, it is his right to examine documents confirming the existence of risks in court, but court will assess the arguments of the parties in the deliberation room.

V. Lyapin, a lawyer, said that in this case the right to defense would be violated. The defense will not be able to file a properly drawn up appeal against the court's decision. There must be a motivational part in the decision.

Refer to Part 5 of Art. 176 of the Criminal Procedure Code, which was declared unconstitutional, is no longer possible. Also, the law prohibits referring to the indictment as documentary evidence of the existence of risks (although the court did this on several occasions). Since the prosecutor did not provide any documents, but only expressed his opinion, the defense does not understand what the court's argumentation will be for making a decision and about what to write in the appeal.

The lawyer also said that according to the doctor's recommendation, Andrei Tatarintsev should take diet food 6 times a day and medications along with meals. Considering that the accused was taken from the pre-trial detention center to court in the morning, and will be returned after dinner, he will starve for almost 24 hours and will not be able to take medicine. This is a violation of the right to life and health.

The defense attorney recalled that in September it will be 6 years since, according to the "Savchenko law", A. Tatarintsev is in the pre-trial detention center, which raises doubts about the reasonableness of the terms of his detention without a sentence. The very fact that the accused is not provided with medical assistance during the trial is bound to be the reason for the appeal to overturn any sentence imposed by the court of first instance. Thus, the consideration of the case may take a period that exceeds the maximum term of punishment provided for by the articles under which Tatarintsev is accused. Therefore, lawyer V. Lyapin asked the court to appoint a measure of restraint for the accused in the form of house arrest or bail, which he could pay.

The detention was extended. Only the operative part of the decision was announced.

The International Society for Human Rights expresses concern about this position of the court, since a reference to the same grounds, if they are repeated for the entire period of a person's detention, for the extension of an exceptional measure of restraint may be a violation of paragraph 3 of Art. 5 of the Convention ("Kharchenko v. Ukraine", No. 40107/02,

paragraphs 80, 81 and 99 of 02.10.2011; “Ignatov v. Ukraine”, No. 40583/15, paragraph 41, of 12.15.2016). The ECtHR also considers that the fact that other measures of restraint during the extension of detention were not considered by the court may indicate a violation of paragraph 3 of Art. 5 of the Convention (“Buryaga v. Ukraine” No. 27672/03, paragraph 62, 03.04.2010).

Monitoring of the case of Andrei Tatarintsev (session 09.03.2020)

On September 3, 2020, an open court hearing was held in the Kuibyshevsky District Court of the Zaporozhye Region in the case of businessman Andrei Tatarintsev, who is accused of committing crimes under Part 1 of Art. 258-3, part 5 of Art. 27, part 2 of Art. 28, part 2 of Art. 437, part 1 of Art. 438 of the Criminal Code of Ukraine (financing a terrorist organization, complicity in the conduct of an aggressive war, cruel treatment of prisoners of war and the civilian population).

According to the lawyer of Andrei Tatarintsev, Vladimir Lyapin, in 2014-2015 the accused traded gasoline at an oil depot located on the territory uncontrolled by the Ukrainian government (ORDLO), the armed men who presented themselves as the military of the unrecognized republics of the “DPR / LPR” ordered him to transfer fuel to the ambulance station and other facilities.

Andrey Tatarintsev suffers from type 2 diabetes. Objective data obtained by the International Society for Human Rights during the monitoring of this proceeding, allow us to conclude that during the 3 years of detention, the accused did not receive medical assistance and dietary food prescribed for his illness.

At the beginning of the session, lawyer Vladimir Lyapin again announced that the leadership of pre-trial detention center No. 11, where the accused is being held, ignored the court decisions. At the last session, the court ordered the isolation ward to send a video recording confirming that Tatarintsev had been given prescribed drugs or had refused them. However, the pre-trial detention center suggested in writing to contact the branch of

the state institution “Center for Health Protection” on this issue. Although, according to Tatarintsev himself, the filming is directly carried out by the duty assistant to the head of the pre-trial detention center. Also, Tatarintsev again confirmed that from August 21, i.e. from the moment of examination by an endocrinologist and the appointment of treatment, the medical unit workers do not give him the prescribed medicine, but offer three unknown pills, packed in a paper bag, without specifying the name, dosage and expiration date. The court disregarded these explanations and suggested that the defense go to the petition, which had previously been registered with the court registry.

Lawyers Vladimir Lyapin and Vadim Kravtsov in accordance with Art. 201 and Art. 206 of the Criminal Procedure Code of Ukraine petitioned to change the measure of restraint for Andrey Tatarintsev. To substantiate their position, they cited paragraph 60 of the ECtHR judgment of 06.10.2008 in the case “Yeloyev v. Ukraine”: “After a certain time has elapsed, the existence of reasonable suspicion ceases to be the basis for depriving a person of liberty, and the judicial authorities must provide other grounds for continuing the detention”.

The ISHR draws attention to the fact that a similar position, which meets the requirements of Part 3 of Article 5 of the Convention, is set out in the decisions “Yablonsky v. Poland”, N 33492/96 para. 80, 2000-XII and “I.A. v. France”, no. 28213/95, para. 102, 1998-VII.

In addition, lawyers quoted an excerpt from the 15th report of the OHCHR on the human rights situation in Ukraine (May 16 - August 15, 2015):

OHCHR has documented a clear and consistent trend in human rights violations against individuals against whom charges of conflict, national security or terrorism are brought, often starting with arbitrary arrest and detention. OHCHR recalls that the prohibition of unjustified detention presupposes that the detention of persons pending trial should be an ex-

ceptional measure of restraint. The conditions under which this measure is applied should be listed in the legislation, and they should not include such vague and inexhaustible standards as “ensuring public safety”. Detention cannot be applied as a compulsory measure of restraint to all persons accused of committing a specific crime, regardless of individual circumstances. During the monitoring of the court hearings, OHCHR drew attention to the fact that neither the prosecution nor the judges check the circumstances for the continued detention of suspects. Courts rarely consider using alternative non-custodial measures such as bail.

According to the lawyer V. Lyapin, the materials of the criminal proceedings against A. Tatarintsev do not contain evidence provided by the Criminal Procedure Code that the “Donetsk people’s republic” and “Luhansk people’s republic”, designated in the indictment as terrorist organizations, are recognized as terrorist in the manner prescribed by law organizations. According to the Law of Ukraine “On Combating Terrorism”, an application for holding an organization accountable for terrorist activities is submitted to the court by the Prosecutor General of Ukraine, prosecutors of the Autonomous Republic of Crimea, regions, cities of Kiev and Sevastopol in the manner prescribed by law.

Lawyer Lyapin repeated that the proceedings did not contain the decision of the Ukrainian court on the appeal of the subjects specified in Art. 24 Law of Ukraine “On Combating Terrorism”, which would recognize the “DPR” or “LPR” as a terrorist organization. Also, according to him, the UN Security Council and the Council of Europe refused to recognize these organizations as terrorist, and the ICRC noted in September 2014 that there is a civil war in Ukraine and called on the parties to the conflict to adhere to international conventions. The defense side indicated that it had received official replies from the Office of the President, the Parliament Committee on Na-

tional Security, the Supreme Court of Ukraine, regional prosecutor’s offices of Ukraine, the Security Service of Ukraine and others that the appeals for recognizing the “DPR” and “LPR” as terrorist (in accordance with the law) have not been reported.

In addition, when petitioning to change the measure of restraint, the defense referred to the Criminal Procedure Code of Ukraine, which says that the prosecution must prove to the court, in addition to the validity of the charge and the existence of risks of non-procedural behavior of the accused, also the impossibility of applying a milder measure of restraint. According to paragraph 34 of the ECtHR judgment in the case “Zentsov and Others v. Russia”, N 35297/05 of 04.25.2013, the accused must be considered innocent until he is found guilty. Thus, the lawyer stated that an accused of a crime should always be released pending trial, unless the state can prove that there are “substantial and sufficient” reasons to justify continued detention. According to paragraph 8 of the ECtHR judgment in the case “Mkhitarian v. Russia”, N 46108/11, dated 02.05.2013, the national authorities are obliged to establish the existence of specific facts that may become the basis for extending the detention period.

Lawyer Lyapin recalled that the Korolevsky District Court of Zhitomir came to the same conclusions by its ruling of June 27, 2018, softening the measure of restraint for the accused under Part 2 of Art. 110, Part 1 of Art. 111, Part 2 of Art. 161, part 1 of Art. 258-3 of the Criminal Code of Ukraine of journalist Vasily Muravitsky. Also, the Kiev Court of Appeal on February 21, 2018 softened the measure of restraint for Dmitry Vasilets and Yevgeny Timonin, accused under Art. 258 - 3 part 1 of the Criminal Code of Ukraine.

In addition to the above as justification for the need to change the measure of restraint, the defense noted that on August 21, the accused Tatarintsev was examined in the pre-trial detention center by endocrinologist S.V. Tovstyga, who prescribed treatment for him. On August 25, the lawyer sent a request to the branch of the state institution “Health Protection Center” of the Zaporozhye region, in

which he asked for information about the availability of appropriate drugs in the medical unit of the pre-trial detention center and the provision of them to Tatarintsev. The response, which was received on August 28, does not state anything about the availability of the requested drugs, but it says that Tatarintsev is given completely different drugs. Thus, the court, according to the position of the lawyer, does not exercise judicial control and does not provide Tatarintsev with the necessary treatment, which is identical to the use of torture against him.

Experts of the International Society for Human Rights draw attention to the fact that failure to provide adequate and timely medical care in places of deprivation of liberty is tantamount to inhuman and degrading treatment (cases “Garumov v. Ukraine”, p. 46; “Hummatov v. Azerbaijan”, pp. 112–122; “Wuhan v. Ukraine”, pp. 77-83; “Petukhov v. Ukraine”, pp. 91-98; “Sergey Antonov v. Ukraine”, pp. 70-75). In May 2020, the ECtHR ruled in the case “Kadagishvili v. Georgia” in which it recognized a violation of Article 3 of the European Convention in a situation where an accused prisoner with diabetes mellitus does not have access to the necessary treatment and a special diet. Tatarintsev has been in a similar situation for a long time.

In this regard, the defense asked to change Tatarintsev’s measure of restraint to house arrest with the obligation to wear an electronic bracelet or bail.

After leaving the deliberation room, the court rejected the defense’s petition and ordered the branch of the Health Protection Center to provide the accused with treatment, provide documents confirming the possibility of keeping Tatarintsev in the pre-trial detention center, and also ensure that the prosecutor’s office inspects the treatment of the accused.

Thereafter, the court proceeded to consider the motion to declare the evidence obviously inadmissible. Lawyer Lyapin asked to recognize the protocol of Tatarintsev’s detention as such, since it was drawn up in violation of the norms of the Criminal Procedure Code and the right to defense. During a search under

Part 1 of Art. 258-3 Tatarintsev was not provided with a lawyer, which is confirmed by the absence of the lawyer’s name in the list of persons who took part in the search. The public defender appeared to sign the protocol only at 10:40 am, while the arrest took place at 8:40 am.

The court also did not satisfy this request, since it did not find any signs of obvious inadmissibility and will assess this document in the deliberation room during the sentencing.

Monitoring of the case of Andrey Tatarintsev (hearing 10.07.2020)

On October 7, 2020, an open hearing was held in the Kuibyshevsky District Court of the Zaporozhye Region in the case of businessman Andrey Tatarintsev, who is accused of committing crimes under Part 1 of Art. 258-3, Part 5 of Art. 27, Part 2 of Art. 28, Part 2 of Art. 437, Part 1 of Art. 438 of the Criminal Code of Ukraine (financing a terrorist organization, complicity in the conduct of an aggressive war, cruel treatment of prisoners of war and the civilian population).

Andrey Tatarintsev suffers from type 2 diabetes. The accused notes that during the 3 years of detention he did not receive adequate medical care and dietary food prescribed for his illness.

Before the start of the hearing, the accused informed those present that after the dismissal of the Chief of the medical unit, there was not a single doctor left in the pre-trial detention center No. 1, and from August 21 of this year, after a visit it by an endocrinologist, he was not given any medicine at all and no one measured his blood sugar. He also handed over to the lawyer Vladimir Lyapin several written requests (with the entering number) to the medical unit of the pre-trial detention center with a request to issue him medications. In addition, Andrei Tatarintsev demonstrated a food ration that was given to him for the “Sudden” - white bread, butter, cookies, eggs and peanuts, which, according to him, does not correspond to the diet for diabetics. The accused said that the video recording of the transfer of food rations to him was stopped in

the pre-trial detention center.

At the beginning of the session, the defendant's lawyer filed a motion to change the measure of restraint from detention to house arrest. He explained that when Andrey Tatarintsev was examined by an endocrinologist on 09.09.2020, a deterioration in his health was recorded and appropriate treatment was prescribed. It was also established that since August 21, 2020, the accused has not received the previously prescribed treatment.

Such actions by the state may violate Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which determines that "no one shall be subjected to torture or inhuman or degrading treatment or punishment" ("Beketov v. Ukraine", para. 76).

Also, according to the decision of the ECtHR ("Kalashnikov v. Russia", para. 95), the state must ensure that a person is held in custody in conditions that respect human dignity so that the nature and method of execution of the measure of restraint does not cause the person suffering or difficulties, the intensity of which exceeds the inevitable level of suffering inherent in detention.

The ECtHR emphasizes that Art. 3 of the Convention imposes an obligation on the State to ensure, taking into account the practical requirements of imprisonment, that the health and well-being of the prisoner is adequately guaranteed, including by providing him with the necessary medical assistance ("Salakhov and Islyamova v. Ukraine", para. 129). In addition, the ECtHR has repeatedly indicated that it is the responsibility of the state to provide the necessary medical assistance to persons in places of detention ("Wuhan v. Ukraine", para. 72).

The defense side attached to the case a response to the request for the provision of public information, which was sent to the head of the pre-trial detention center No. 11, Viktor Ovdienko, regarding the availability of foodstuffs corresponding to the diet for diabetics. This request was forwarded to the head of the state institution "Health Protection Center" of the Zaporozhye region - Oleg Shulga,

who replied that the competence of the staff of the branch's medical departments does not include providing prisoners with dietary meals. In addition, the lawyer told the court that the inquiry about the state of health of Andrey Tatarintsev was sent to the pre-trial detention center by the People's Deputy Renat Kuzmin, after which the chief medical officer of the medical unit Svetlana Zakharchuk quit and went to work in the Kamensk penal colony No. 101. According to the lawyer, during the examination by the doctor on September 9, facts of falsification were established, regarding which the People's Deputy of Ukraine Renat Kuzmin has already applied to the Ministry of Justice of Ukraine. We are talking about the answer of the head of the state institution "Center for Health Protection" of the Zaporozhye region Oleg Shulga to the lawyer's request of Vladimir Lyapin, where Oleg Shulga wrote that on August 21, 2020, Tatarintsev was not examined by an endocrinologist, and the doctor's report issued to the accused has signs of falsification. And this despite the fact that the lawyer provided the court with documents confirming that the examination was carried out - the passes issued in the pre-trial detention center, a copy of the visitors' logbook, statements by Andrey Tatarintsev and doctor Svetlana Tovstyga for the examination.

At the hearing, a question was asked to the convoy whether the accused had received medication before going to court. The chief of the convoy answered in the negative. The defense side petitioned that the court either ensure the rights of the prisoner in the pre-trial detention center, or change the measure of restraint to a milder one, so that the accused could get access to medical care.

Prosecutor Aleksei Kozakevich asked not to grant the defense's petition on the grounds that, according to a letter sent to the court from the pre-trial detention center medical unit, the accused himself refuses to take medications.

The court read out the answer received on September 9 from the head of the state institution "Health Protection Center" of the Zaporozhye region, Oleg Shulga: "According to

the explanations of the medical unit employees, the examination by the doctor Tovstyga was not carried out, and the certificate provided by the lawyer Vladimir Lyapin shows signs of fictitiousness. Andrey Tatarintsev's medical records are not in the medical unit; they were handed over to the court upon request. Andrey Tatarintsev refuses to measure blood sugar and take medications prescribed by doctor Tovstyga. The medical unit has all the medicines in the form of analogues." Attached to the letter were copies of journal with Andrey Tatarintsev's refusal to take medications.

The lawyer said that the copies of the journal provided were falsified, since during the examination of Andrey Tatarintsev by the endocrinologist Padafa on September 9, 2020, there were no marks in the journal for August 21 at all. In addition, there is no signature of Andrey Tatarintsev under the refusals to receive medicines. According to Vladimir Lyapin, the conclusions of doctors Tovstyga and Padafa are in a pre-trial detention center, a branch of the state institution "Health Protection Center" of the Zaporozhye region and are filed with the personal file of the accused. In addition, Tatarintsev's medical card was indeed in court for some time, but then was sent back to the pre-trial detention center. The presiding judge Viktor Malevanny confirmed that the court had sent the medical card to the medical unit of the isolation ward long ago.

Experts from the International Society for Human Rights remind that failure to provide adequate and timely medical care in prisons is tantamount to inhuman and degrading treatment ("Garumov v. Ukraine", para. 46; "Hummatov v. Azerbaijan", paras. 112-122; "Wuhan v. Ukraine", paras. 77-83; "Petukhov v. Ukraine", paras. 91-98; "Sergei Antonov v. Ukraine", paras. 70-75).

The position of the European Court in the case "Kadagishvili v. Georgia" is indicative. The applicant's complaint in the aforementioned case concerns the inadequacy of medical care for his diabetes and related health problems, the alleged delay in the administration of insulin injections, the refusal of the prison authorities to provide him with the necessary

special diet, and to supplement the care with medicines and medical assistance from his family. (case "Kadagishvili v. Georgia", para. 121). As to the adequacy of the medical supervision and care provided in respect of the applicant's health problems, the Court notes that his diagnosis of diabetes was known to the relevant authorities from the moment of his initial arrest. Despite the fact that the medical history relating to the applicant's treatment in the medical department of the Tbilisi prison shows that his condition was constantly monitored by the doctor on duty at that institution and that he also consulted an endocrinologist and cardiologist on several occasions, the Court cannot ignore the findings of the private medical expert examining the applicant that the applicant's health had deteriorated "probably due to irregular diabetes treatment". Moreover, no medical records were drawn up regarding the applicant's stay in ordinary prison cells of the Tbilisi prison. (case "Kadagishvili v. Georgia", para. 123).

Moreover, there are no records of the insulin injections given to the applicant in prison. Accordingly, the Court considers that the Government failed to fulfill their obligation to prove that there was adequate medical supervision and treatment for the applicant in prison. (case "Kadagishvili v. Georgia", para. 124).

The situation is aggravated by the prison's inability, as expressly acknowledged by the relevant authorities, to provide the applicant with the necessary diabetes diet. The need to provide the applicant with a special diet was also noted as a problem by the prison doctor on duty. Although the authorities appear to have allowed the applicant's family to provide him with the appropriate food, his complaint shows that food could not always have been allowed through. Thus, there is no indication that the conditions of the applicant's detention were adapted to his state of health. (case "Kadagishvili v. Georgia", para. 125).

The foregoing considerations are sufficient for the Court to conclude a violation of Art. 3 as regards the applicant's treatment in prison. (case "Kadagishvili v. Georgia", para. 126).

Based on the analysis of the ECtHR decision

“Kadagishvili v. Georgia”, it can be concluded that in the case of Andrey Tatarintsev there may be a violation of Art. 3 of the Convention.

However, in the deliberation room, the national court decided not to grant the defense motion. Only the operative part of the judgment was announced.

The judgment was later published. It is worth paying attention to the motivation for the court’s refusal to change the measure of restraint. Thus, the court took into account the gravity of the incriminated crime, the existence of the risk that the accused may unlawfully influence witnesses and victims in this criminal proceeding, including witnesses declared by the defense side who have not yet been questioned by the court at the hearing. In addition, the court referred to the fact that the evidence had not been examined, and the accused himself did not testify to the court either. The court also indicated that in the pre-trial detention center the accused is under constant supervision of medical workers and receives the prescribed treatment. This institution has all the conditions for the necessary treatment.

It is worth analyzing the practice of the European Court, which was used by the Kuibyshevsky District Court of the Zaporozhye Region to motivate its position. Thus, one of the decisions referred to by the court was the decision “Goginashvili v. Georgia”. The National Court quotes: “Art. 3 of the Convention cannot be interpreted in such a way as to enshrine a general duty to release detainees due to health conditions, but rather requires the compatibility of the prisoner’s health condition with his or her prolonged detention, even if he or she is seriously ill, and depends on the state’s ability to provide appropriate treatment of the required quality in a place of detention. However, if you get acquainted with the original of the decision, we understand that in the case “Goginashvili v. Georgia” it is about the release from serving a sentence (para. 79). And in the case of Andrey Tatarintsev, the final decision has not yet been made. Thus, the application of the legal positions of the ECtHR from the case “Goginashvili v. Georgia” in the case of Andrey Tatarintsev is incorrect. Having ana-

lyzed the context of the decision “Goginashvili v. Georgia”, the International Society for Human Rights believes that there is a difference in the stages of criminal proceedings. In the case “Goginashvili v. Georgia”, the issue of releasing the detainees due to health conditions is considered at the stage of the already adopted court decision, which established guilt. While in the case of Andrei Tatarintsev, the court continues to consider the case and the guilt of the accused is not confirmed by the court decision.

Then the court proceeded to consider the evidence contained in the first volume of the case. The prosecutor asked to pay special attention to the letters of the operational unit of the SBU, which contain evidence of Andrey Tatarintsev’s connection with the participants, as he believes, of terrorist organizations of the DPR and LPR, including the phone numbers that were used in their communication.

The lawyer said that this is inadmissible evidence, since the actions of the operational unit on behalf of the investigator are regulated by the Criminal Procedure Code, which indicates the only form of documents drawn up by him - a protocol, but not a letter. In addition, these documents contain information about the personal data of Andrey Tatarintsev and his family members, as well as data that have signs of banking secrecy. Access to such information is allowed exclusively by the investigating judge, but there is no corresponding definition in the case file. The court decided to assess this evidence in the deliberation room at the time of sentencing.

Experts of the International Society for Human Rights draw attention to the fact that violation of the right to privacy of correspondence, telephone conversations, accompanied by illegal interference in personal and family life, in violation of the procedure established by the criminal procedure legislation of Ukraine (in particular, Art.258 of the Criminal Procedure Code of Ukraine) and guaranteed by Art. 31, 32 of the Constitution of Ukraine (“Everyone is guaranteed the privacy of correspondence, telephone conversations, and other correspondence”, “No one may be subject to interference

in his personal and family life, except in cases provided for by the Constitution of Ukraine”), Art. 5, 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (in terms of violation of the legal procedure for limiting the right to liberty and security of person and the right to respect for private and family life), Art. 17 of the Law of Ukraine “On the execution of decisions and the application of the practice of the European Court of Human Rights” is a gross violation of human rights and freedoms.

The defense also had questions about the appendix to the protocol of interrogation of witnesses and the investigative experiment. Lawyers Vladimir Lyapin and Vadim Kravtsov petitioned to declare this evidence inadmissible, since the disc with the recording in the understanding of the Criminal Procedure Code of Ukraine is neither the original nor a duplicate made in the same way as the original. In addition, the disc was not packed, it did not contain the date and signatures of the participants in the process, and the file properties indicated that the disc was recorded an hour after the end of the investigative experiment. The court postponed the decision on this issue and gave the prosecutor time to look for the original recording or information regarding the whereabouts of this original.

We remind you that in case of doubts about the reliability of the source of evidence, there is a growing need to confirm the circumstances with evidence from another source, as well as the possibility of the accused to appeal against such evidence (case “Jalloha v. Germany”, para. 96). In such situations, a question arises, which must be answered: is the judicial review, including the methods of obtaining evidence, fair (case “Bykov v. Russia”, para. 89).

You should also pay attention to the fact that the case of Andrey Tatarintsev has been heard for more than 3 years. The Court reiterates that it holds the State responsible for the delay in the judges’ decisions (case “Macfarlane v. Ireland”, para. 121).

Art. 6 of the Convention recognizes that every person prosecuted in a criminal case has the right to receive, within a reasonable time,

a final decision on the well-foundedness of the charges against him, or rather to ensure that the accused do not remain under the weight of the charges for a long time and that a decision is made on the justification charges (case “Wemkhov v. Germany” para. 18, case “Giulia Manzoni v. Italy” para. 25, case “Brogan and Others v. United Kingdom” para. 65).

The provisions of Article 6 of the European Convention on Human Rights indicate that the accused cannot remain in the dark about their fate for too long (cases “Nakhmanovich v. Russia” para. 89, “Ivanov v. Ukraine” para. 71).

According to the ECtHR, “by requiring the consideration of cases within a ‘reasonable time’, the Convention emphasizes the importance of administering justice without delay, which may jeopardize its effectiveness and credibility” (case “Vernillo v. France”, para. 38).

The presiding judge said that the pre-scheduled hearing for October 26 will not take place due to the elections. The hearing was postponed to 10:00 am on November 11, 2020.

Monitoring of the case of Andrey Tatarintsev (hearing on 11.25.2020)

On October 25, 2020, an open hearing was held in the Kuibyshevsky District Court of the Zaporozhye Region in the case of businessman A. Tatarintsev, who is accused of committing crimes under Part 1 of Art. 258-3, part 5 of Art. 27, part 2 of Art. 28, part 2 of Art. 437, part 1 of Art. 438 of the Criminal Code of Ukraine (financing a terrorist organization, complicity in the conduct of an aggressive war, cruel treatment of prisoners of war and the civilian population).

According to the lawyer of A. Tatarintsev, Vladimir Lyapin, in 2014-2015 the accused was trading gasoline at a tank farm located on the territory of certain districts of Donetsk and Lugansk regions, and after the obligation to the armed persons who appeared to be the military of the unrecognized republics of the DPR / LPR, he was forced to transfer fuel to the ambulance station and other facilities.

A. Tatarintsev suffers from type 2 diabetes. Objective data obtained by the ISHR in the

course of monitoring this proceeding allow us to conclude that during almost 3.5 years of detention, the accused did not receive medical assistance and dietary food prescribed for his illness.

Hearing progress: At the beginning of the hearing, it was reported that the prosecutor of the Office of the Prosecutor General A. Kazakevich could not be present at the hearings in the case of A. Tatarintsev, since quarantine was declared in the country, and Zaporozhye was in the “red” zone, which did not allow him to move from Kiev to Zaporozhye on a public transportation. A new prosecutor was appointed in the case, from the Kuibyshevsky interdistrict prosecutor’s office - V. Vinnitsky. Since he finds out about his participation in the proceedings only the day before the hearing and, accordingly, could not prepare, the prosecutor filed a motion to postpone the hearing. Taking into account that the next hearing agreed by the parties was scheduled for December 23, 2020, judge V. Malevanny announced that he was postponing the court to that date. However, lawyer V. Kravtsov recalled that A. Tatarintsev’s term of measure of restraint expires on December 5, so the court must meet before the specified time. Judge V. Malevanny replied that the issue of extending the measure of restraint can be considered right now, to which he received a protest from the defense - procedural actions cannot be carried out without the participation of the prosecutor, and the prosecutor has not yet studied the case and, accordingly, cannot prove either the existence of risks or the validity of the charge, which is necessarily required by the provisions of the Criminal Procedure Code of Ukraine. After a short meeting, the panel of judges postponed the hearing to December 02, 2020.

Experts of the International Society for Human Rights believe that the postponement of hearings for various reasons, incl. due to the unpreparedness of the prosecutor, may lead to a violation of paragraph 3 of Art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, i.e., the right to trial within a reasonable time (“Buryaga v. Ukraine”, para. 62), especially in light of the

defendant’s illness.

According to the lawyer V. Lyapin, it became known that a complaint was filed with the ECtHR regarding the violation of A. Tatarintsev’s rights. The defense side claims that the failure to provide medical care to a person suffering from diabetes for several years can lead to irreparable and at the same time significant harm to the life and health of the prisoner, disability and even death.

According to V. Lyapin, all the necessary evidence regarding the pre-trial detention center has already been obtained. Thus, to the request of A. Tatarintsev to the new management of the medical unit of the pre-trial detention center N11, represented by D. Balashov, an official response was received that the drugs prescribed by the endocrinologist were not available at the disposal of the medical unit of the pre-trial detention center. The defense recalled that in a number of decisions of the Kuibyshevsky District Court on the extension of A. Tatarintsev’s measure of restraint in the form of detention in custody, the court referred to the certificate of the head of the branch of the State Institution “Health Protection Center of the State Penitentiary Service of Ukraine”, in which it is indicated that the medical unit of the pre-trial detention center N11 is equipped with all prescribed drugs in the form of domestic analogues. Since the documents contradict each other, the defense would like to make sure that A. Tatarintsev received treatment and dietary nutrition.

To obtain information on the provision of dietary food to A. Tatarintsev, the court interrogated the convoy. The head of the convoy once again confirmed that he had not received any medicines for A. Tatarintsev, and whether the ration given to him was dietary food, he did not know. Then V. Lyapin asked the court to allow the accused to be examined by endocrinologist S. Tovstyga, who was in the courtroom, in order to assess the state of health of A. Tatarintsev, who had not received the medicine, and to determine whether the ration transferred from the pre-trial detention center was dietary food for diabetics. However, the court did not allow this to be done, telling the

lawyer that he “confuses the courtroom with a hospital”. Despite the lawyer’s statement that he had one more motion, the collegium finished the session and left the hall. The ISHR experts express their concern about the violation of the principle of equality in the case of A. Tatarintsev. The principle of equality of arms is only one feature of the broader concept of a fair trial, which also includes the fundamental right to adversarial criminal proceedings (“Barbera, Messege and Jabardo v. Spain”, paras. 33-34).

An ambulance was called to the court again. A. Tatarintsev’s blood sugar measurement gave (on the paramedic’s device) an indicator of 15.6 (3 times higher than the norm) and (on the device of the endocrinologist Tovstyga - 18.8 (3.5 times higher than the norm), with such indicators, the patient needs hospitalization, an IV drip and other medical measures. Both the paramedic of the ambulance and the endocrinologist confirmed to the court’s questions that the blood pressure is 165/100, tachycardia and arrhythmia are present.

A. Tatarintsev himself reported confirmed cases of coronavirus in jail among the administration, many prisoners are sick, some have lost their sense of smell, but the administration does not conduct a coronavirus test and does not isolate those infected from the rest of the prisoners.

The next day, lawyer V. Kravtsov got coronavirus tests for his clients in the pre-trial detention center N11. Several of them had positive results. One of the infected is kept in a cell together with A. Tatarintsev, a diabetic, who is at risk. All data will be sent to the ECtHR for a final decision in accordance with Rule 39 of the Regulation.

The International Society for Human Rights draws attention to the fact that, according to the ECtHR judgment in the “Kalashnikov v. Russia” case, para. 95, the state must ensure that a person is held in custody in conditions that respect human dignity, so that the nature and method of execution of the measure of restraint did not cause the person suffering or hardship, the intensity of which exceeds the inevitable level of suffering inherent in detention.

In the judgment of the ECtHR in the case “Salakhov and Islyamova v. Ukraine”, para. 129 “. . . The European Court emphasizes that Art. 3 of the Convention imposes a duty on the State to ensure, taking into account the practical requirements of imprisonment, that the health and well-being of the prisoner is adequately guaranteed, including by providing him with the necessary medical assistance.” In addition, the ECtHR has repeatedly indicated that it is the responsibility of the state to provide the necessary medical assistance to persons in places of detention (“Wuhan v. Ukraine”, para. 72).

In addition, the ECtHR argues that the failure to provide adequate and timely medical care in prisons is tantamount to inhuman and degrading behavior (“Garumov v. Ukraine”, para. 46; “Hummatov v. Azerbaijan”, paras. 112-122; “Wuhan v. Ukraine”, paras. 77 - 83; “Petukhov v. Ukraine”, paras. 91 - 98; “Sergei Antonov v. Ukraine”, paras. 70 - 75).

The court’s refusal to conduct a medical examination of the accused complaining about the state of health may be regarded as a violation of Art. 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which determines that “no one should be subjected to torture or inhuman or degrading treatment or punishment” (“Beketov v. Ukraine”, para. 76).

Monitoring the case of Andrey Tatarintsev (hearing 12/23/2020)

On December 23, 2020, an open court hearing was held in the Kuibyshevsky District Court of the Zaporozhye Region in the case of businessman Andrey Tatarintsev, who is accused of committing crimes under Part 1 of Art. 258-3, Part 5 of Art. 27, Part 2 of Art. 28, Part 2 of Art. 437, Part 1 of Art. 438 of the Criminal Code of Ukraine (financing of a terrorist organization, complicity in the conduct of an aggressive war, cruel treatment of prisoners of war and the civilian population).

Experts of the International Society for Human Rights continue to monitor this criminal proceeding. Hearing progress: At the beginning of the hearing, the accused stated that he was

not feeling well, and lawyer V. Lyapin asked the judges for permission to ask the convoy if A. Tatarintsev had been given medications and diet food prescribed by the doctor for the day. The panel of judges refused to satisfy the motion, citing the fact that this had nothing to do with the essence of the case, and the presiding judge added that the lawyer already knew that none of the above had been given to the accused.

A. Tatarintsev was outraged by the court's decision, stating that he was again given food unacceptable for diabetics and was not provided with any medicine or mask, although in the pre-trial detention center out of seven people who passed the coronavirus test, five had a coronavirus. When asked if the defendant was ill with COVID, the lawyer replied that the pre-trial detention center impedes the doctor's ability to conduct an examination in the detention center. Despite the information provided by the lawyer, the court, without questioning the accused whether he could take part in the hearing for health reasons, invited the parties to file petitions.

The International Society for Human Rights expresses concern that the court did not respond to the accused's statement that he was denied access to medical care, especially during the COVID19 pandemic. In the judgment in the case "Garumov v. Ukraine" (No. 70043/17, § 46, ECHR 2019-VI), the European Court of Human Rights notes that the refusal of the state to place a prisoner in a hospital for additional examination and inpatient treatment if his health deteriorates is inhuman and degrading treatment. This fact was regarded by the ECtHR as a violation of Article 3 of the Convention.

Further, the defense side announced the challenge of the panel of judges. The lawyer V. Lyapin referred to Art. 206 of the Criminal Procedure Code of Ukraine, which defines the actions of judicial control carried out by the court in order to ensure the rights of the defendants during the trial. This article requires the court, in case of a statement by the defendant about the use of violence against him during detention, to accept such a statement from the

accused, to provide a forensic medical examination, to instruct the relevant investigative body to investigate the facts, to take the necessary measures to ensure security. According to the lawyer, the defense repeatedly raised the issue of not providing A. Tatarintsev with medicines and dietary food in the pre-trial detention center. The court does not take any action or decision, as a result of which the state of health of the accused is constantly deteriorating. The collegium confines itself to formal sending requests about the possibility of treating the defendant in the conditions of a pre-trial detention center and about checking the facts indicated by the defense by the supervisory authorities. Most of these orders have not been answered yet, and this does not cause any reaction from the court.

V. Lyapin reminded the collegium that as early as September 28, 2020, he filed a request to receive from the pre-trial detention center statements about the possibility of A. Tatarintsev's treatment in the isolation ward. The collegium satisfied it and sent a letter to O. Shulga, the head of the "Health Protection Center" branch of the State Administration for Information Protection in the Zaporozhye region, demanding to provide the court with a video recording of the transfer of medicines to A. Tatarintsev. The video recording was not provided to the court, but the collegium again did not react to it. Also, lawyer V. Lyapin recalled the hearing held on December 2, 2020, at which the issue of extending the measure of restraint to A. Tatarintsev was considered. The defender noted that on that day, A. Tatarintsev's blood sugar rose to 22.5 points, while the norm was 5.5, the blood pressure rose to 165/95 and the temperature rose to 37.3. The employees of the pre-trial detention center medical unit suspected the prisoner had COVID (this was confirmed by the certificate of the head of pre-trial detention center 11, D. Balashov, dated 12.02.2020). Thus, the convoy was not allowed to take A. Tatarintsev to court. A video conference was scheduled, but the state of health of the accused was such that he was physically unable to participate in it, as reported to the collegium by video

link and went to the medical unit of the pre-trial detention center, where by that time the prosecutor for supervision and the doctor of the health center had arrived to examine the patient. The lawyer V. Lyapin said that the judges ignored this fact and continued the session without the participation of the accused (which is unacceptable according to the provisions of Article 193 of the Criminal Procedure Code of Ukraine), referring to his allegedly voluntary refusal to participate. On this occasion criminal proceedings began on the commission of a criminal offense under Part 1 of Art. 374 of the Criminal Code of Ukraine (violation of the right to defense), in which A. Tatarintsev was recognized as a victim.

Also, according to the text of the defense petition, a few months ago Tatarintsev's blood sugar reached 15 units, and now it reaches 20 and above, which indicates an obvious deterioration in the health of the accused, who, with such indicators, may fall into a coma. A. Tatarintsev himself told the court that every day at 7 am employees of the medical unit come to him to measure sugar and blood pressure, but they do not bring medicine. According to the accused, the chief medical officer D. Balashov in a private conversation explained to him that such a demand came directly from the head of the financial institution of the public health center in the Zaporozhye region, O. Shulga, from whom the Zaporozhye prosecutor's office demanded to act in this way.

The International Society for Human Rights draws attention to the fact that Art. 6 of the Convention clearly states that the implementation of court decisions is part of the right to a fair trial. Each party must be given a reasonable opportunity to present its evidence in conditions that do not place it at a disadvantage in relation to its opponent ("Avotins v. Latvia" No. 17502/07, para. 119 of 05.23.2016; "Dombo Beheer B.V. The Netherlands", No. 14448/88, para. 33 of 10.27.1993).

In addition, the Court considers that the government must provide reliable and convincing evidence that the accused received comprehensive and appropriate medical assistance while in detention ("Savinov v. Ukraine", No.

5212/13, para. 50, of 10.22.2015), since it is the State that is responsible for the detention of persons in conditions that respect human dignity, including the provision of necessary medical care ("Kalashnikov v. Russia", No. 47095/99, para. 95, ECHR 2002 VI; "Wuhan v. Ukraine", No. 30628/02, para. 72, ECHR 2008-XII). A sharp deterioration in the state of health of a person in places of detention inevitably casts doubt on the adequacy of the medical care available there ("Salakhov and Islyamova v. Ukraine", No. 28005/08, para. 129, ECHR 2013-III).

While the board was in the deliberation room, an ambulance arrived at the court. The paramedic recorded Tatarintsev's blood sugar at 17.1 (with a norm of 5.5) and a blood pressure of 160/100. Since the ambulance kit does not include hypoglycemic drugs, the paramedic offered to take the defendant to the hospital to provide him with medical assistance. The convoy picked up the accused and took him to the hospital in Belmak.

Leaving the deliberation room, the board rejected the challenge, and since A. Tatarintsev was no longer in the courtroom, suggested postponing the hearing. Lawyer V. Lyapin stated that he had received a letter from Strasbourg from the head of the ECtHR Filtration Section, Judge Klaudiusz Ringilevich, which indicated that the complaint about A. Tatarintsev was given priority in accordance with Rule 41. On 13 November 2020, an emergency examination of the complaint under Rule 39, with the requirement to ensure the transfer of the applicant to a specialized clinic for treatment, was suspended by the European Court in order to provide additional information on the reaction of the authorities to the applicant's health problems, as well as on the applicant's attempts to obtain legal protection for his complaints and the results of these attempts. By January 15, 2021, the state must provide the European Court with the following materials and answers to the questions raised:

- whether the applicant had access during the last 6 months to consultations of medical specialists specialized in the relevant fields related to his diseases; - whether all prescribed

medical tests have been performed and has been provided with all medications or other prescribed treatment; - copies of the applicant's complete medical record, including medical records of his current state of health and copies of documents issued by specialist doctors who advised him and prescribed treatment; - details of the food offered to the applicant in the remand prison and during transport between the remand prison and the courthouse; - copies of the menu according to which the applicant was given food in the remand prison and during transport between the remand prison and the courthouse.

3.62 The trial of Oleg Tatarov

Monitoring of the case of Oleg Tatarov (12.28.2020)

On December 28, 2020, the hearing in the case of the Deputy Head of the Office of the President of Ukraine - Oleg Tatarov, who is suspected of committing a crime under Part 3 of Article 369 of the Criminal Code, namely, a proposal, promise or provision of improper benefits to an official, was supposed to take place in the Supreme Anti-Corruption Court. On December 18, 2020, O. Tatarov was handed a suspicion of providing an unlawful benefit to an official for falsifying an examination in the case of taking possession of property of the National Guard in the amount of more than UAH 81 million.

Earlier, on December 24, 2020, the court should have already considered the issue of choosing a measure of restraint for the suspect but could not do this because at about 11:40 pm on December 23, the General Prosecutor's Office changed the jurisdiction of this criminal proceeding: the case was transferred from the National Anti-Corruption Bureau (NACB) of Ukraine to Security Service of Ukraine. NACB considers such actions of the General Prosecutor's Office as interference in their work.

Due to such changes, the new group of prosecutors was not yet authorized to participate in the proceedings, and therefore the court could not choose a measure of restraint, be-

cause according to Article 193 of the CCP, consideration of a petition for choosing a measure of restraint must be considered with the obligatory participation of prosecutors.

A hearing was scheduled for December 28, 2020 to resolve the same issue, but the court was forced to postpone the consideration again until December 30 due to the fact that the prosecutors did not appear without notifying the court of the reasons for failure to appear. The International Society for Human Rights is concerned that in this proceeding there may be a delay in the process by the prosecution authorities, since for the second consecutive hearing the prosecutor's office cannot start work, which prevents an effective trial and, in the future, consideration of the case within a reasonable time. Also, given the complex process of transferring the case to jurisdiction, and the wide publicity of the case in the media, it is impossible to exclude the problem of manipulating public conscience in order to achieve a certain attitude of society and, possibly, the collegium of the court to the proceeding (see the report of the ISHR "Incitement to hatred and disinformation in the media"). It is noteworthy that the European Court of Human Rights in its decisions takes into account delays, sometimes referred to as "significant periods of inactivity", which are believed to be the fault of the authorities ("H. v. The United Kingdom", para. 45).

As mentioned above, the case is resonant, and on the day of the trial, a lot of media representatives, as well as activists, gathered under the building with the words "Tatarov needs to be behind bars!" and posters "No corruption!" demanded punishment for Oleg Tatarov and the resignation of Prosecutor General Irina Venediktova, who, in their opinion, hinders the investigation of the case and the prosecution of the suspect. Often, such actions of activists can be regarded as pressure on the court and inducement to make an appropriate decision, which was previously noted by the observers of the ISHR in the cases of P. Poroshenko, A. Melnik and others. Although, according to the ECtHR, national courts should be composed entirely of professional judges, whose

experience and qualifications, in contrast to the jury, allow them to resist any external influences (“Craxi v. Italy”, para. 104; “Mircea v. Romania”, para. 75).

3.63 The trial of Valery Terekhov

Monitoring of the case of Terekhov Valery Vasilievich, Kutas Vladimir Viktorovich (hearing 05/08/2020)

On May 08, 2020, in the Kovelsky City Court of the Volynsky Region a hearing was held in case No. 159/2105/19 on charges of Valery Vasilyevich Terekhov (under part 4 of article 187, part 2 of article 353, part 1 of article 263 of the Criminal Code of Ukraine) and Kutas Vladimir Viktorovich (under part 4 of article 187, part 2 of article 353 of the Criminal Code of Ukraine), who are accused of armed assault on a 52-year-old businessman with the aim of taking possession of his property. The International Society for Human Rights has decided to monitor the observance of the right to a fair trial in this proceeding (in the video broadcast mode) due to the complexity of the work of the ISHR observers during the quarantine period.

During the court hearing, the court heard the testimony of a witness who participated in the proceeding from the building of another court and with a change in appearance and voice. However, for technical reasons, an effective interrogation was not possible. The judges did not hear the witness, the content was distorted. The witness was asked repeatedly to repeat what was said. A break was announced to eliminate technical difficulties, but even after that the sound quality did not improve. Nevertheless, the panel of judges continued the interrogation, periodically questioning and clarifying the testimony of the witness. According to the observer, the video broadcast mode did not give the opportunity to hear the witness’s testimony, which cannot mean, of course, that the participants in the trial had the same audibility, but nevertheless, it raises doubts about the accuracy of these testimonies.

The witness’s testimony is important for the

criminal proceedings, since it is assumed that he knows the circumstances of the preparation for the commission of the criminal offense according to the accused themselves.

It should be noted that the admissibility and reliability of the evidence underlying that it is of undeniable importance for a fair trial. The quality of the evidence must be taken into account, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy. In case of doubt about the reliability of a particular source of evidence, the need for evidence to confirm it from other sources is growing (“Dzhallokha v. Germany”, para. 96).

According to the International Society for Human Rights, the testimony of a witness, if there is doubt about their accuracy, cannot be the basis for a court decision. In the event of such doubts, the ISHR believes that a witness should be re-examined under sufficient technical conditions.

3.64 The trial of Ilya Turman

Monitoring the trial of Ilya Sergeevich Turman (hearing on June 23, 2020)

On June 23, 2020, a preparatory hearing took place on case No. 701/171/20 on charges of Ilya Sergeevich Turman accused of committing crimes under Part 3 of Article 206-2, part 3 of Article 358 and part 2 of Article 366 of the Criminal Code of Ukraine. Ilya Sergeevich is suspected of holding an illegal general meeting of LLC “Victoria”, where he single-handedly made a decision to alienate 100% of the share of LLC “Victoria” in favor of another person.

The preparatory hearing began with the consideration of a request from a media representative for a video recording of the preparatory hearing, as well as an online broadcast of future hearings. The petition was motivated by the public interest in this case. The defense objected, in particular, the defense attorney stated that, firstly, the trial was broadcast on the website of the “Judicial Power”, and secondly, it violates the right of the accused to the presumption of innocence, since the me-

dia can form the public opinion that her client had committed the crimes incriminated to him despite the fact that his guilt has not yet been proven. However, the court granted the request, stating that there were no grounds for holding a closed hearing.

The lawyer of the accused petitioned that her client during the preparatory hearing was seated not in the glass box, but next to her. She referred to the fact that the stay of the accused in a glass box does not correspond to the case law of the ECtHR. The victim's lawyer objected to this motion. He pointed out a possible threat to the health of the participants in the proceeding. The judge granted the request of the accused's lawyer, motivating her decision by the fact that the presence of the accused in the glass box is a violation of the right to defense and would be degrading treatment.

It has been established by the case law of the ECtHR that, although the placement of the accused behind glass partitions or in glass cubicles does not in itself imply an element of humiliation sufficient to achieve a minimum level of severity, this level can be achieved if the circumstances of imprisonment (in a "cage"), taken as a whole will cause them suffering or hardships that exceed the inevitable level of suffering inherent in detention ("Yaroslav Belousov v. Russia", § 125).

The court considers that the glass partitions do not have the harsh appearance of metal cages, in which simple exposure to the public could undermine the image of the accused and cause them to feel humiliated, helpless, fearful, distressed and inferior. The ECtHR also notes that glass structures are used in courtrooms in other member states, although their designs range from glass booths to glass partitions, and in most states their use is intended for "high security" hearings ("Yaroslav Belousov v. Russia", § 124).

It is worth paying attention to the positive tendency for judges to satisfy requests for the accused to stay next to a lawyer during the trial, and not in a glass box. Thus, the judges successfully implement the above aspect of the application of Article 3 of the European

Convention and recognize that the presence of an accused in a glass box is a violation of the right to defense and degrading treatment.

Also, the lawyer Kaplunova turned to the court with a motion to close the criminal proceedings in connection with the end of the pre-trial investigation. She argued that the prosecution opened the materials of the pre-trial investigation to the victims, but since the victims are not a party to the criminal proceedings, the period for their acquaintance with the materials of the pre-trial investigation is included in the above period. The prosecutor noted that the current criminal procedural legislation guarantees equal rights for the defense and victims to familiarize themselves with the materials of the pre-trial investigation. The lawyer's motion was denied.

During the preparatory court hearing, the prosecutor filed a motion to extend the measure of restraint for the accused in the form of detention. In turn, the defense petitioned to change the measure of restraint. Justifying the existence of risks, the prosecutor noted the following circumstances: 1) Turman previously hid from the pre-trial investigation; 2) The accused has repeatedly ignored the calls of the investigator without good reason.

The defendant's lawyer stated that the prosecutor's request was formal. In support of her petition, the lawyer pointed out that the amount of bail of 2 million hryvnias is prohibitive for the accused, which is why he is forced to be in custody. She insisted on the possibility of imposing a less severe measure of restraint, not related to restriction of freedom. The court granted the prosecutor's request.

According to the case-law of the European Court of Human Rights, the guarantee provided for in Article 5 §3 of the Convention is intended to ensure the appearance of the accused at the hearing ("Manguras v. Spain", § 78). Therefore, the amount of the bail should be established taking into account the personality of the defendant, his property, his relationship with the guarantors, that is, taking into account the confidence that the prospect of loss of the bail or measures taken against his guarantors in the event of his failure to

appear in court will be sufficient to keep him from escaping (“Neumeister v. Austria”, § 14).

Since the issue under consideration is the fundamental right to liberty guaranteed by Article 5, the authorities should make every effort to establish an appropriate amount of bail when deciding whether to continue the detention. In addition, the amount of bail must be properly justified in the decision to determine the bail and must take into account the property of the accused (“Manguras v. Spain”, § 79-80). The failure of the domestic courts to assess the applicant’s ability to pay the required amount could lead to a violation of the Convention.

However, in the decision of the Mankovsky District Court of the Cherkasy Region of March 03, 2020 on the determination of the bail, its size was not justified. This is exactly what the lawyer stated when filing an appeal against the court decision. However, the Court of Appeal did not provide a reasoned response to such an argument in its judgment of April 15, 2020.

As for the extension of the measure of restraint for the accused in the form of detention, it is worth noting that the indictment was received by the Mankovsky District Court of the Cherkasy Region on February 26, 2020. On March 03, 2020, Turman I.S. was elected a measure of restraint in the form of detention with the possibility of bail. By a decision of April 27, 2020, the measure of restraint was extended. In the case, a problem arose with the appeal of court decisions on the election and extension of a measure of restraint, since it is impossible to form a panel of judges in the court of appeal to consider the appeal due to the lack of the required number of judges. For this reason, the Cherkasy Court of Appeal appealed to the Cassation Court of the Supreme Court in order to make a decision to transfer the materials of criminal proceedings on the lawyer’s appeal against the decision of the Mankovsky District Court of the Cherkasy Region dated March 03, 2020 from the Cherkasy Court of Appeal to another court of appeal. As a result, the materials were transferred to the Kropyvnytskyi Court of Appeal, which did

not satisfy the lawyer’s appeal.

Thus, the ISHR can state the emergence of a new negative trend in the justice system of Ukraine - the impossibility of promptly appealing against the decision of the first instance court on the election or extension of the term of detention. And the main reason for this is the huge shortage of judges.

In addition, the Cherkasy Court of Appeal, on the basis of a petition by the victim’s lawyer, “Victoria” LLC, considered the issue of jurisdiction. As a result, a decision was made to transfer the case materials for further proceedings to the Monastyrishensky District Court of the Cherkasy Region. Which led to the resumption of the preparatory court hearing stage, which took place on June 23, 2020.

3.65 The trial of Valentyn Tyapkin

Monitoring of criminal proceedings of V. Tyapkin (session 04.01.20)

On April 01, 2020, the Lutsk City Court of the Volynsky Region heard a case on charges of V. Tyapkin committing a crime, under Part 3, Article 289 of the Criminal Code of Ukraine - illegal possession of a vehicle.

At the hearing, the prosecutor was scheduled to submit written evidence. However, the accused’s lawyer stated that he was feeling unwell and requested to limit consideration to the application of the prosecutor’s request for an extension of detention. The prosecutor requested an extension of the measure of restraint. But the lawyer said that the prosecutor argues his position solely by the gravity of the crime. In turn, the lawyer filed a motion to change the measure of restraint to house arrest. He also indicated that for a long time the accused did not have social ties, which is important for choosing this type of measure of restraint. However, at the time of this court hearing, there is a person with whom the accused will be able to live during the period of house arrest; they could not let him into the courtroom because of quarantine measures.

As a result of the review, the prosecutor’s

request was granted due to the fact that the judicial investigation was not completed, and all the witnesses were not questioned.

The European Court of Human Rights notes that national courts must first ensure that in a particular case the detention of the accused does not exceed a reasonable time. To do this, they must, taking due account of the principles of the presumption of innocence, investigate all circumstances of the case, which can confirm or refute the existence of a social need that justifies deviations from the requirement to respect individual freedom, and indicate this in their decisions to extend the term of detention. The question of whether there has been a violation of paragraph 3 of Art. 5 for the protection of human rights and fundamental freedoms (hereinafter referred to as the Convention), the Court must decide, relying mainly on the grounds cited in these decisions (“I.A. v. France”, para 102).

According to paragraph 3 of Art. 5 of the Convention after a certain period of time, just the existence of reasonable suspicion does not justify the deprivation of liberty, and the courts must give other reasons for the extension of detention (“Borisenko v. Ukraine”, para. 50). Moreover, these grounds must be clearly indicated by the national courts (“Eloev v. Ukraine”, para. 60, “Kharchenko v. Ukraine”, para. 80).

The court often found a violation of paragraph 3 of Art. 5 of the Convention in cases where national courts continued to be detained, referring mainly to the gravity of the charges and using template language, without even considering specific facts or the possibility of alternative measures (“Kharchenko v. Ukraine”, paras 80-81; “Tretyakov v. Ukraine” para. 59).

The existence of a reasonable suspicion of a crime committed by a detained person is an indispensable condition for the legality of her continued detention, but after the lapse of time such a suspicion will not be sufficient to justify prolonged detention. The court never attempted to translate this concept into a clearly defined number of days, weeks, months or years, or at different times depending on the gravity of the crime. Once “reasonable suspi-

cion” is no longer sufficient, the court must establish what other grounds given by the courts continue to justify the person’s deprivation of liberty (“Maggie and Others v. The United Kingdom”, paras. 88-89).

The ECtHR also recalls the immutability of the grounds for suspicion. Suspicion that the arrested person has committed an offense is a “sine qua non” condition in order for his continued detention to be considered legal, but after a while this condition ceases to be sufficient. Then the Court must establish other grounds on which the decisions of the judiciary are based, continue to justify the deprivation of liberty. If these grounds turn out to be “relevant” and “sufficient”, then the Court will ascertain whether the competent national authorities found “special good faith” in the conduct of the proceedings (“Labita v. Italy”, para. 153).

Representatives of the ISHR are concerned about the attitude of prosecutors towards extending detention. Prosecutors do not properly prove the existence of risks, which leads to shifting the burden of proof to lawyers. And in this case, the court, deciding on the application of the measure of restraint requested by the prosecutor, must either take the side of the prosecution, independently substantiating the need for detention, or adopt a ruling without proper motivation. This negative trend is systematic in all regions of Ukraine and is part of the general trend of automatic extension of measures of restraint.

Monitoring of criminal proceedings of Valentin Tyapkin 07/16/2020

On July 16, 2020, the Lutsk City District Court of the Volynsky Region heard the case on charges against V.I. Tyapkin in the commission of a crime under Part 3 of Article 289 of the Criminal Code of Ukraine - illegal seizure of a vehicle.

At the hearing, the prosecutor filed a petition to extend the measure of restraint to the accused due to the fact that the consideration of the case is essentially continuing, and the risks on the basis of which Valentin Tyapkin is being held in custody continue to exist. The

defendant's lawyer objected to the satisfaction of the prosecution's motion, pointing out that the prosecution's witnesses had already been questioned, and the prosecutor had transferred the material evidence to the court, so Tyapkin had no way of influencing them.

In turn, the accused filed a petition to change the measure of restraint to house arrest, referring to the excessive length of stay in the pre-trial detention center in terrible conditions, which negatively affects his health.

The court decided to satisfy the prosecutor's motion.

It is worth noting that in this case, the prosecution continues to improperly prove the existence of risks, which leads to an automatic extension of the terms of detention of the accused.

The ECtHR points out that the question of whether the length of detention is reasonable cannot be decided in the abstract. It must be decided in each case, taking into account the specific circumstances, grounds and duly documented facts, as well as have appropriate motivation. Continued detention can only be justified in a particular case if there are specific indications that it is required by the true demands of the public interest, which, despite the presumption of innocence, outweigh the rule of respect for personal freedom.

According to paragraph 3 of Article 5 of the ECHR, after a certain period of time the existence of a reasonable suspicion ceases to be a basis for deprivation of liberty and the judicial authorities are obliged to provide other grounds for continued detention. In addition, such grounds must be clearly indicated by the national courts ("Kharchenko v. Ukraine", paras. 79-80).

The European Court of Human Rights has often found a violation of paragraph 3 of Article 5 of the Convention in cases where domestic courts continued detention, relying mainly on the gravity of the charges and using formulaic language, without even considering specific facts or the possibility of applying alternative measures ("Kharchenko v. Ukraine", paras. 80-81; "Tretyakov v. Ukraine" para. 59).

The existence of a reasonable suspicion that

a detained person has committed a crime is a prerequisite for the legality of the continued detention, but after the expiration of such a suspicion, in the opinion of the ECtHR, will not be enough to justify a prolonged detention. The European Court of Human Rights has never tried to translate this concept into a clearly defined number of days, weeks, months or years, or at different times depending on the severity of the crime. Once "reasonable suspicion" is no longer sufficient, the national court must establish whether there are other grounds justifying the deprivation of liberty ("Maggie and Others v. The United Kingdom", paras. 88-89).

The accused filed an appeal against the previous decision of the Lutsk City District Court of the Volynsky Region of April 1, 2020, which extended the terms of detention. As indicated in the decision of the court of appeal dated June 21, 2020, being duly notified of the time and place of the appeal hearing, the lawyer of the accused A.V. Lavrenchuk failed to appear in court twice, which led to a delay in the trial of the defendant's appeal. As a result, the court of appeal ruled to instruct the Volynsky Regional Center for the provision of free secondary legal aid to ensure the participation of a lawyer in the consideration of the defendant's appeal. However, as it became known to the ISHR observer, the accused later dropped the appeal and the proceedings were closed.

As indicated by the Cassation Court of the Supreme Court in its decision of June 6, 2019 in case No. 738/1085/17: "... the effectiveness of the defense is not identical with the achievement of the desired result for the accused by the results of the trial, but consists in providing him with adequate and sufficient opportunities using his own procedural rights or qualified legal assistance."

Thus, the absence of a lawyer had a negative impact on the right of the accused to effective legal assistance. And, in fact, it led to the loss of the meaning of considering the complaint, since a new decision had already been taken, which extended the term of detention.

Monitoring of criminal proceedings of Valentin Ivanovich Tyapkin (November 27, 2020)

11/27/2020 in the Lutsk City District Court of the Volyn Region with the participation of a panel of judges A.E. Sivchuk, A.M. Pakholyuk, A.D. Artysh a hearing was held in case No. 161/14219/18 on charges of V.I. Tyapkin in the commission of a criminal offense under Part 3 of Article 289 of the Criminal Code of Ukraine - "illegal seizure of a vehicle".

At the hearing, the accused changed his lawyer to T.P. Gaidamachenko, who will represent his interests on the basis of a legal assistance agreement. In connection with the replacement of the lawyer, T.P. Gaidamachenko objected to further judicial consideration, since she did not have time to get acquainted with the case materials and asked the court to limit the hearing to considering the petition of the prosecution and defense. The court and the prosecutor did not object.

The prosecution filed a motion to extend V.I. Tyapkin's measures of restraint in the form of detention for a period of 60 days, and indicated that the risks under Article 177 of the Criminal Procedure Code of Ukraine, which were the basis for the application of an exceptional measure of restraint in the form of detention, did not decrease. The prosecutor indicated that V.I. Tyapkin may put pressure on witnesses, there is a high probability of committing new criminal offenses or interfering with the investigation.

Defender of V.I. Tyapkin objected to the satisfaction of the prosecutor's petition, and stated that the accused would not exert any pressure on the witnesses. In turn, the lawyer T.P. Gaidamachenko petitioned to change the measure of restraint to house arrest, due to the fact that the accused has the opportunity to get a job and provide support for his family, in particular, two minor children. Also, V.I. Tyapkin has a registered place of residence in the city of Kovel and stable social ties.

The accused himself has filed a motion to change the measure of restraint to any form other than detention. He asked to release him completely from charges regarding Part 3 of

Article 289 of the Criminal Code of Ukraine.

In addition, in his petition, the accused stated that all reasonable terms of detention had been violated in relation to him, and the court was showing a biased attitude towards him.

After evaluating the petitions, the court ruled to satisfy the prosecution's petition in full, extending the detention period for 60 days with the possibility of paying a bail in the amount of UAH 352,400. The court argued its position by the fact that the accused was on the wanted list, all witnesses from the defense had not yet been questioned. In addition, the trial is ongoing, and there is a high probability that the defendant will obstruct the consideration of criminal proceedings.

The experts of the ISHR are concerned that the extension of the terms of detention in the case of V.I. Tyapkin may be automatic. According to the monitoring results on July 16, 2020, the observer of the ISHR drew attention to the improper proof of the existence of risks by the prosecution. For the first time by the Lutsk City District Court of the Volyn Region, the term of detention of V.I. Tyapkin was extended on September 10, 2018, which means that the accused has been in custody for more than 2 years waiting for a court decision.

The European Court of Human Rights argues that national courts must first and foremost ensure that, in a particular case, the detention of an accused does not exceed a reasonable time. To this end, they must, taking due account of the principles of the presumption of innocence, examine all the circumstances of the case that may confirm or deny the existence of a public need that justifies deviations from the requirement to respect individual liberty, and indicate this in their decisions to extend the term of detention ("IA v. France", para. 102).

Having studied all the decisions of the Lutsk City District Court of the Volyn Region on the extension of the term of detention, the ISHR notes that the national court has not changed the rationale for the need to extend the term of detention from the moment of the first decision. Such actions may contradict the

practice of the ECtHR.

Thus, the ECtHR points out that the question of whether the length of detention is reasonable cannot be decided in the abstract. It must be decided in each case, taking into account the specific circumstances, grounds and duly documented facts, as well as have an appropriate reasoning. Continued detention can only be justified in a particular case if there are specific indications that it is required by the true demands of the public interest, which, despite the presumption of innocence, outweigh the rule of respect for personal freedom. According to paragraph 3 of Article 5 of the ECHR, after a certain period of time the existence of a reasonable suspicion ceases to be a basis for deprivation of liberty and the judicial authorities are obliged to provide other grounds for continued detention. In addition, such grounds must be clearly indicated by the national courts (“Kharchenko v. Ukraine”, paras. 79-80).

In the case of V.I. Tyapkin the decision of the national court is based on the following facts: V.I. Tyapkin is accused of committing an especially grave crime, was on the wanted list, witnesses were not questioned. Such arguments formed the basis of the first decisions of the national court to extend the period of detention and have remained unchanged for two years. In justifying the need to extend the period of detention, the domestic court limited itself only to one paragraph.

The European Court of Human Rights has often found a violation of paragraph 3 of Article 5 of the Convention in cases where domestic courts continued detention, referring mainly to the gravity of the charges and using formulaic language, without even considering specific facts or the possibility of applying alternative measures (“Kharchenko v. Ukraine”, paras. 80-81; “Tretyakov v. Ukraine”, para. 59).

The existence of a reasonable suspicion that a detained person has committed a crime is a prerequisite for the legality of continued detention, but after the expiration of such a suspicion, in the opinion of the ECtHR, it will not be enough to justify prolonged detention. The European Court of Human Rights has never

tried to translate this concept into a clearly defined number of days, weeks, months or years, or at different times depending on the severity of the crime. Once “reasonable suspicion” is no longer sufficient, the national court must establish whether there are other grounds justifying the deprivation of liberty (“Maggie and Others v. The United Kingdom”, paras. 88-89).

According to the decision of the ECtHR in the case “Belevitsky v. Russia” (paras. 111-112), the court must take into account that the restriction of consideration of the application for election (or the extension) of a measure of restraint in the form of detention only by a list of legislative (standard) grounds for its application without establishing their availability and validity to a specific person is a violation of the requirements of paragraph 4 of Article 5 of the Convention.

In addition, the International Society for Human Rights is concerned about the timing of the consideration of case No. 161/14219/18. The indictment was submitted to the court on 09/06/2018. Thus, the case of V.I. Tyapkin has been considered in court for more than 2 years.

Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms recognizes for every person prosecuted in a criminal case the right to receive, within a reasonable time, a final decision on the well-foundedness of the charges against him, or rather, the achievement of ensuring that the accused do not remain for a long time under the weight of the charge and that a decision is made on the validity of the charge (“Vemkhov v. Germany”, para. 18, “Julia Manzoni v. Italy”, para. 25, “Brogan and Others v. United Kingdom”, para. 65).

In its judgments, the ECtHR indicates that an accused in criminal proceedings should have the right to have the proceedings in his case carried out with particular care, especially in the case of any restriction of freedom for a period until the end of the proceedings. Article 6 of the ECHR requires courts to use all available procedural means to establish the guilt or innocence of a person without undue delay. This requirement is intended to ensure the ear-

liest elimination of uncertainty about the legal fate of the accused, who remains in a state of uncertainty throughout the entire period of proceedings, despite the fact that the proceedings are ongoing or have been suspended (“Doroshenko v. Ukraine”, para. 41).

3.66 The trial of “Ukrainian Railways”

Monitoring of the trial in the case of the purchase of diesel fuel of the “Ukrainian Railways” Joint Stock Company

On January 28, the High Anti-Corruption Court held a preparatory hearing in the case of the purchase of diesel fuel of the “Ukrainian Railways” Joint Stock Company.

On October 15, 2019, the Specialized Anti-Corruption Prosecutor’s Office of the Prosecutor General’s Office of Ukraine approved and transferred to the High Anti-Corruption Court the indictment in the case of the former head of the Production Support Branch of the “Ukrainian Railway” JSC Alexander Kulak and his deputy Daniil Mizin, as well as two more employees. All accused are charged with part 2 of article 364 of the Criminal Code of Ukraine, namely the abuse of power or official position in order to obtain undue benefits, entailing grave consequences.

The prosecution believes that the accused entered into a conspiracy with an unknown person and, in the interests of this person and their own, abusing their official position, unreasonably increased the price of diesel fuel. At the beginning of the trial, a small incident occurred. The court asked the participants in the proceedings whether they have any motions or objections. After this question, the lawyers filed an objection to the actions of the judges, which indicated that the panel in this composition made it impossible to objectively consider the case by an independent and impartial court, as some of the decisions that had been taken earlier created a procedural “collapse”. As the lawyer A. Boryak noted, the court has stumped itself with its decisions and will now take subsequent decisions guided not

by an internal conviction, but by a desire not to make a decision that contradicts the previous one. The contents of this statement could only be found out from the second attempt by the lawyer to read it out, because the court, at the first attempt, tried to prohibit the lawyer from giving any explanations on his application, being guided by the fact that now there is a different stage of the judicial review, although, recall, the court itself asked a question regarding the availability of petitions, making it clear to the parties that this stage is now.

Also, at previous sessions, lawyers raised the issue of returning the indictment because of its inconsistency with the requirements of the Code of Criminal Procedure of Ukraine. The defense indicated that the data contained in the crime of which the person was charged was not specific. The petition was filed, but there have been no court decisions on it yet. ISHR experts express concern about this fact, since if the prosecutors do not clearly interpret the alleged crime against the accused, the latter will not be able to defend themselves effectively, which certainly can be regarded as a violation of the right to defense.

In a criminal case, the provision of full, detailed information regarding the charges against the person and, accordingly, the legal qualifications that the court can give relevant facts is an important prerequisite for a fair trial (“Pelissier and Sassi v. France”, “Mattochia v. Italy”, “I.N. and others v. Austria”). In addition, the right to be informed of the nature and cause of the charge should be considered in the light of the defendant’s right to be able to prepare for the defense (“Pelissier and Sassi v. France”, “Dallas v. Hungary”).

Monitoring of the trial in the case of the purchase of diesel fuel by the Joint Stock Company “Ukrainian Railway” (hearing on 07.27.2020)

On July 27, the Supreme Anti-Corruption Court held a preparatory hearing on the case of the purchase of diesel fuel by the Joint Stock Company “Ukrainian Railways” online.

Recall that on October 15, 2019, the Specialized Anti-Corruption Prosecutor’s Office

of the General Prosecutor's Office of Ukraine approved and submitted to the Supreme Anti-Corruption Court the indictment in the case of the ex-head of the Production Support Center branch of JSC "Ukrainian Railways", Aleksandr Kulak and his deputy, Daniil Mizin, as well as two employees. All defendants are charged with Part 2 of Article 364 of the Criminal Code of Ukraine, namely, abuse of power or official position for the purpose of obtaining unlawful benefits, which entailed serious consequences.

Lawyer V.I. Tkachenko at the hearing did not appear, without informing the court about the reasons for failure to appear, in turn, lawyer Frolova O.G. sent a petition to the court about the impossibility of being present at this court session in connection with the urgent investigative search actions at which she must be present. Also, a representative of the victim did not appear in the courtroom (which, according to the parties, resigned, and a new representative has not yet been appointed). Thus, JSC "Ukrainian Railway" was left without a representative in this court session.

As a result, the court, guided by the norms of the current legislation of Ukraine, submitted for consideration the issue of the possibility of further continuation of the trial in the absence of defenders and a representative of the victim.

The prosecution did not object to the possibility of holding a hearing in such circumstances. The defense, on the contrary, expressed the opinion that it was impossible to consider the claim in the absence of a representative of the victim. Lawyer Popovskaya made a proposal to recognize the claim in this situation as such that was not filed at all.

Without going into the deliberation room, the panel of judges, taking into account the position of the parties, made a decision to extend the session in the absence of the victim's representative, referring to Article 314 of the CCP of Ukraine and stating that the failure of the victim's representative to appear in the courtroom, who was duly notified of the time and place of consideration of the case is not a reason for postponing the preliminary hearing.

The accused A.P. Kulak, for his part, also

expressed his position on the impossibility of considering the case without the participation of his lawyer O. G. Frolova and the need for this reason to postpone the hearing to properly ensure his right to defense, in connection with which the court announced a break in order to wait for the lawyer Frolova, who did not appear at the hearing.

Note that, in accordance with the case law of the European Court of Human Rights, the court's refusal to postpone the hearing at the request of a lawyer who participated in another proceedings, and the consideration of the case without a defense lawyer is a violation of Article 6 of the Convention ("Bartaya v. Georgia", 26 July 2018).

During the court session, the defense drew attention to the expediency of considering a petition for clarification of court decisions, which was filed on June 10, 2020, focusing on the violation by the court of Article 380 of the Code of Criminal Procedure, namely the 10-day period for considering such a petition. The court finally considered this request, but it was rejected.

The International Society for Human Rights expresses concern about the fact that the court did not take into account the time period for considering the application in this matter without any explanation, since this may indicate a violation of general principles of criminal justice.

Para. 1 of Article 6 the Convention requires that the "court" falling within its scope be impartial. As a rule, impartiality means the absence of bias, and its presence or absence can be tested in various ways ("Kyprianou v. Cyprus"). The test of objectivity involves the determination of whether there are provable facts that may raise doubts about their impartiality ("Castillo Algar v. Spain").

The ECtHR also recalls that equality of parties is an integral part of a fair trial. This principle requires each party to be given a reasonable opportunity to present its case in such circumstances that do not place it at a disadvantage with respect to the opposing party ("Fouche v. France"; "Bulut v. Austria"; "Bobek v. Poland"; "Klimentiev v. Russia") . . . Equality

of the parties requires the establishment of a fair balance between the parties and applies equally in criminal and civil matters.

Attorney Plyotka P.Y. submitted an application to clarify the judgment of 01/28/2020, the consideration of which was postponed to 07/31/2020 due to the failure of lawyer O.G. Frolova to appear and the need for her to familiarize herself with this statement.

3.67 The trial of Svetlana Vanzha

Monitoring the case of Svetlana Vanzha (hearing on June 24, 2020)

On June 24, 2020, an online hearing was held in the Leninsky District Court of the city of Zaporozhye in the case of Svetlana Vanzha, who is accused of committing a criminal offense under Part 1 of Article 155 (premeditated murder) of the Criminal Code of Ukraine.

The session was attended by the prosecutor, the defense, the victim, the accused, the secretary and the panel of judges: T.F. Turbina, N.Y. Kozlova, A.M. Gnatyuk.

The trial against Svetlana Vanzha has been going on since September 2018.

During the court session on June 24, 2020, material evidence was examined (passport of the accused, kitchen knives, mobile phones). After that the defense filed a petition about the need to make a request for a phone number and obtain information about who exactly called an ambulance, since the testimony of the witness and the victim was different.

The prosecutor filed a petition for an extension of the measure of restraint in the form of detention, motivating it by the fact that at the moment the criminal proceedings cannot be completed, while the accused, realizing the severity of the crime committed and subsequent punishment, in order to avoid being brought to criminal responsibility and further punishment may be hiding from the court. Taking into account the personality of the accused, the nature and severity of the crime in which S. Vanzha is accused, the application of milder restraint is considered insufficient. The defen-

dant's lawyer objected to the prosecutor's petition but did not file his own petition to change the measure of restraint to a softer one. This, according to the observer, may indicate a weak position of the defense.

For the entire period of the trial, the measure of restraint in the form of keeping the accused in custody has not changed. The court, having heard the opinions of the parties, satisfied all the requests of the parties.

The ISHR draws attention to the fact that during the entire trial, the accused was in the glass box. The European Court of Human Rights has repeatedly stated in its decisions, in particular "Svinarenko and Slyadnev v. Russia" and "Labita v. Italy", that keeping the accused in certain cases in a metal cage, or even in a glass box, may be considered a violation of Articles 3 and 6 of the Convention for the Protection of Human Rights. The Court also notes that Armenia and Georgia, for example, removed the cages in their courtrooms as a result of reforms.

3.68 The trial of Voitenko and others

Monitoring of criminal proceedings of Voitenko M.S., Plavak A.D., Kosolap A.P., Bogaychuk R.V, Sidoruk V.M. (November 20, 2020)

On 11.20.2020, in the Kovel City District Court of the Volynsky Region, with the participation of a panel of judges Logvinyuk I.M., Lesik V.O., Panasyuk S.L., a hearing was held in case No. 164/309/19 on the charges of Voitenko M.S., Plavak A.D. in the commission of criminal offenses under Parts 2, 3 of Art. 307 of the Criminal Code of Ukraine – "Illegal production, manufacture, acquisition, storage, transportation, transfer or sale of narcotic drugs, psychotropic substances or their analogues", Kosolap A. P., Bogaychuk R.V., Sidoruk V. M. in the commission of criminal offenses, provided for in Part 3 of the same article of the Criminal Code of Ukraine.

On November 20, 2020, the International Society for Human Rights carried out the first

monitoring of this criminal proceeding. The examination of the case was scheduled for 10:00 am, but began at 1:10 pm due to the fact that the convoy was unable to leave the pre-trial detention center on time and bring the accused Kosolap A.P. on time.

The court session was attended by the defenders of all the accused and the prosecutor.

The prosecution filed a petition for an extension of the measure of restraint in the form of detention for a period of 60 days, concerning the accused Voitenko M.S., Plavak A.D., Kosolap A.P. arguing that the risks provided for by Art. 177 of the Code of Criminal Procedure of Ukraine, which were the basis for the application of an exceptional measure of restraint in the form of detention, did not diminish. The prosecutor indicated that Voitenko M.S., Plavak A.D., Kosolap A.P. could put pressure on witnesses in this case and there is a high probability of committing new criminal offenses. And the prosecutor sees no reason to soften the measure of restraint.

The accused Kosolap A. P. and his defense counsel objected to the prosecution's petition and stated that there were no grounds for keeping him in custody. Moreover, the lawyer of the accused Kosolap A.P. drew the court's attention to the fact that the prosecutor filed the petition prematurely, because the term of the measure of restraint had not yet ended and should continue until November 27, 2020. Therefore, the submission of premature motions before the expiration of the previous court decisions, in his opinion, violates his right to access to justice, in particular, the appeal against orders to extend the term of a measure of restraint.

In addition, the defense lawyer of the accused Plavak A.D. stated that the risks referred to by the prosecutor in his petition did not exist, the prosecutor could not ensure the appearance of witnesses from the prosecution, arguing that the place of residence of the witnesses was unknown, they were taking the necessary measures to establishing the whereabouts of witnesses and they will be mandatory present at the hearing.

The court supported the defense, agreeing

with the opinion of the defense that there are no risks regarding pressure on witnesses, which the prosecutor indicated in his petition, but granted the prosecutor's petition in full and assigned each accused, concerning which the issue of extending the period of detention was considered, bail in the amount of 192 thousand 100 UAH.

The ISHR Expert Council is concerned that the extension of the terms of detention in this case may be automatic due to insufficient reasoning by the prosecutor of the need to extend the exceptional measure of restraint. For more than 2 years the accused have been in custody.

Regarding this issue, the European Court of Human Rights argues that the national courts must, in the first place, ensure that, in a particular case, the imprisonment of an accused does not exceed a reasonable time. To this end, they must, taking due account of the principles of the presumption of innocence, examine all the circumstances of the case that may confirm or deny the existence of a public need that justifies deviations from the requirement to respect individual liberty, and indicate this in their decisions to extend the term of detention ("IA v. France", para. 102).

The ECtHR points out that at the initial stages of the investigation, the possibility of obstruction of justice by the accused justifies the detention of such an accused. However, once evidence is gathered, this rationale becomes less convincing. In particular, as regards the possibility of putting pressure on witnesses, the Court reiterates that the domestic courts must show that during the relevant period of the applicant's detention there continued to be a substantial risk of intimidation of witnesses, it is not enough to rely only on some abstract possibility not supported by any evidence. The court must also analyze pertinent factors, such as progress in the investigation or proceedings, the applicant's personality, his behavior before and after arrest, and any other specific factors to justify the risks that he might abuse the returned freedom by acting in for the purpose of falsifying or destroying evidence, or putting pressure on victims ("Sokurenko v. Russian Federation", para. 88).

As mentioned above, the prosecution refers to the initial risks in its applications for the extension of the measure of restraint, namely the pressure on the witnesses. However, it is the defense that does not ensure the attendance of witnesses. Such actions of representatives of the prosecutor's office contradict the principles of the Convention and may be the basis for recognizing a violation of the rights of the accused under Art. 5.

It should be noted that the accused Kosolap A. P. at the hearing on 11.20.2020, behaved aggressively, shouted and swore, used profanity towards the court and representatives of the prosecutor's office. This behavior demonstrates a social danger to society and may be one of the reasons for the extension of detention.

In addition, the International Society for Human Rights is concerned about the timing of the consideration of case No. 164/309/19. The indictment was submitted to the court on February 14, 2019. Thus, the case of Voitenko M.S., Plavak A.D., Kosolap A.P., Bogaychuk R.V, Sidoruk V.M. has been considered in court for almost 2 years.

Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms recognizes for every person prosecuted in a criminal case the right to receive, within a reasonable time, a final decision on the justification of the charges against him, or rather to ensure that the accused do not remain for a long time under the weight of the charges and that a decision be made on the validity of the charge ("Wemkhov v. Germany", para. 18, "Giulia Manzoni v. Italy", para. 25, "Brogan and Others v. United Kingdom", para. 65).

In its judgments, the ECtHR indicates that the accused in criminal proceedings should have the right to have the proceedings in his case carried out with particular care, especially in the case of any restriction of freedom for a period until the end of the proceedings. Article 6 of the ECtHR requires courts to use all available procedural means to establish the guilt or innocence of a person without undue delay. This requirement is intended to ensure the earliest elimination of uncertainty regarding the legal fate of the accused, who remains

in a state of uncertainty throughout the entire period of the proceedings, despite the fact that the proceedings are ongoing or have been suspended ("Doroshenko v. Ukraine", para. 41).

The next court session was scheduled for December 21, 2021. The participants during the trial could not decide on the dates of the next hearings. They considered options to schedule a hearing for January. However, the court noted that the accused are in custody and it is necessary to choose an earlier date.

Thus, the International Society for Human Rights believes that the main reason for delays in the consideration of a case may not be the actions (inaction) of the court, but the improper performance of its powers by the prosecution, which cannot ensure the appearance of witnesses. In addition, the defense side also has difficulties in establishing the date of the hearing, which undoubtedly leads to a delay in the consideration of the case.

3.69 The trial of Alexander Volkov

Monitoring the case of Alexander Volkov (hearing 04/03/20)

On April 3, 2020, the Kiev Court of Appeal opened the proceedings on the appeal of the defender of the accused Alexander Anatolyevich Volkov, lawyer L. Kalenichenko to the decision of the Borispol district court of the Kiev region of 03/17/2020, by which the accused continued to be held in custody for another 60 days.

Alexander Volkov is charged with criminal offenses under Part 3 of Article 255 (creation of a criminal organization), Part 3 of Article 27 (types of accomplices), Part 3 of Article 146 (illegal imprisonment or kidnapping), Part 3 of Article 27, part two of Article 127 (torture), part 3 of article 27, article 340 (unlawful obstruction of the organization or holding of meetings, rallies, marches and demonstrations), part 3 of article 27, paragraphs. 3, 12, part 2, article 115 (intentional murder of a hostage or a kidnapped person, committed by prior conspiracy by a group of persons) of the Criminal Code of Ukraine.

Volkov A. was detained in July 2017. The prosecutor's office accuses him of organizing the abductions, as well as of relations with the person who ordered the abduction of activists of the events of 2014 that took place on "Maidan" in Kiev, Yuri Verbitsky and Igor Lutsenko in January 2014.

According to the investigation, the attackers attacked I. Lutsenko and Yu. Verbitsky on January 21, 2014. The latter were taken to a forest in the Kiev region, where they were beaten, and demanded to provide some information related to the Maidan. Subsequently, they were taken to a deserted area and released. As a result of torture, Y. Verbitsky died. Alexander Volkov faces life imprisonment.

This proceeding was selected by the International Society for Human Rights due to the complication of the case of monitoring the observance of the right to a fair trial during the quarantine period.

To begin with, that defender Yemets S.M. objected to the satisfaction of the prosecutor's request and appealed the court's decision (as of the time of writing the report, the appeal proceedings had already been opened on the complaint).

Lawyer Kalenichenko L.S. fully supported the objections of her colleague. They believe that the prosecutor's arguments do not contain a reasonable justification for the stated risks. In addition, the defender noted special circumstances in the country, and the fact that being in custody could bring the accused to critical health, and therefore asked the court to change the measure of restraint to a milder one, namely house arrest. The defendant also objected to the extension of his detention. In addition, he noted that the prosecutor presents facts that are not clear to him.

At the previous session, the prosecutor requested the court to extend the measure of restraint in the form of detention. One of the key circumstances that, in the opinion of the prosecution, proves the validity of the application of an exceptional measure of restraint to A. Volkov in the crimes he is charged with, is the risk that the accused will escape from justice.

In this petition, the prosecutor drew attention to the behavior of the accused A. Volkov, who in his repeated appeals insisted that the risk of his escape, which the prosecution insists on, is unreasonable, since he traveled to the Russian Federation for business purposes, and the city of his departure is completely territorially not associated, in particular, with Moscow. At the same time, when the prosecution provided evidence to the contrary, he ceased to deny this fact. By April 2014, the accused did not make any trips to the Russian Federation. But, the amount of these trips increased immediately after other suspects in the case left the territory of Ukraine.

According to the prosecutor, the risk of hiding from the court in this case is clearly confirmed by the behavior of other accomplices of the alleged crimes.

She believes that there is a need to extend the period of detention, which is related to the fact that any other measure of restraint not related to detention will not be able to ensure the fulfillment of the procedural obligations assigned to him.

Therefore, the prosecutor argues that if the defendants try to escape, it will be impossible to further the trial and implement the general principles of criminal proceedings.

A similar situation was analyzed by the European Court of Human Rights in the case of "Fedorenko v. Russia". In paragraph 70 of the judgment of September 20, 2011, the Court indicated that "... the conduct of an accomplice in a crime cannot be a decisive factor in assessing the risk of a prisoner escaping. Such an assessment should be based on the personal characteristics of the prisoner," that is, violations of the regime by other accused cannot worsen the situation or blame others. Including, in relation to the risk of hiding from the investigation and the court (clauses 22-25 "Neumeister v Austria").

The Court also emphasized that "the existence of a common risk as a result of the organized nature of criminal activity can be taken as a basis for detention at the initial stages of the proceedings. However, the Court cannot agree that the nature of the indicated

activities may constitute grounds for decisions on detention at further stages of the proceedings” (paragraph 78 of “Artemov v. Russian Federation”).

It is worth noting that earlier the defense has already asked the court to change the measure of restraint to house arrest several times, but to no avail. The International Society for Human Rights considers it necessary to pay attention to the fact that the prosecutor’s requests for an extension of the measure of restraint in the form of detention for a long time are duplicated and the risks remain the same and are not supported by new evidence.

In accordance with the Code of Criminal Procedure, the term of a determination on detention in custody or on the extension of such detention may not exceed 60 days. However, according to paragraph 3 of Art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, after a certain period of time, the mere existence of reasonable suspicion does not justify deprivation of liberty, the courts must give other reasons for the extension of detention (“Borisenko v. Ukraine”, para. 50).

It can be noted that quite often the trial is delayed, the court constantly extends the measure of restraint and the person is in custody for a long time, which essentially violates his rights. Or, the consideration of the appeal is appointed in violation of the terms when a new court ruling on the measure of restraint has already been adopted, which has already been repeatedly noted in the case of A. Melnik and others, as well as in the case of lawyer A. Chibirdin.

According to the ECtHR case law, detention can only be justified if there is a specific public interest, which, despite the presumption of innocence, prevails over the principle of respect for individual freedom (“Kharchenko v. Ukraine”, para. 79).

Since A. Volkov is accused of committing crimes against participants in protests on the Maidan, as well as of participating in the murder of one of such participants, this case can really cause a public outcry in Ukraine. First of all, this can be confirmed by the fact that it

is constantly being covered both by the media and by online broadcasts. Nevertheless, each of the risks that underlie both the petition of the prosecution and, undoubtedly, the basis of the court ruling on the extension of the measure of restraint in the form of detention should be fully justified and supported by the necessary evidence, which excludes the risk of unjustified detention guarded. In addition, the International Society for Human Rights has repeatedly emphasized the fact that according to the CPC, the prosecutor is also obliged to prove to the court that no alternative measure of restraint can prevent the accused from complying with his procedural obligations and prevent the risks for judicial review.

3.70 The trial of Pavel Volkov

Monitoring the case of journalist Pavel Volkov (hearing on 02.25.2020)

On February 25, the Supreme Court held a hearing in the case of journalist from Zaporozhe Pavel Volkov.

On September 27, 2017 Pavel Volkov was arrested. Along with this, searches were carried out illegally in the apartments of his wife and mother. The journalist is charged under two articles of the Criminal Code of Ukraine, namely, part 2 of article 110 of the Criminal Code of Ukraine - encroachment on the territorial integrity of Ukraine, as well as Article 258-3 - other aiding to terrorists. He spent 13 months in jail. After lengthy court hearings on March 27, 2019, the court fully acquitted Pavel Volkov. Later, the Zaporozhe prosecutor’s office filed an appeal against the acquittal, but the Court of Appeal upheld it. The prosecutor’s office further complained to the Supreme Court because the acquittal was allegedly imposed by a biased court. The defense noted that most likely the prosecution is trying to appeal the decisions of the courts of previous instances only because the investigator and the prosecutor fear disciplinary liability, as during the whole proceeding a number of procedural violations were committed on his part. Among other things, ISHR observers have repeatedly

noted the abuse of procedural rights by the prosecution.

Article 30 of the Universal Declaration of Human Rights establishes as a priority good faith behavior and disposition by all participants. This provision is duplicated in Article 17 of the ECHR, which not only establishes a ban on abuse of rights, but puts this provision in the universally recognized Convention principle of law - the principle of fair use of rights, organically covering the scope of fair use of procedural rights.

So, at the beginning of the court session, the panel of judges stated that the consideration of the case should be postponed due to the fact that one of the judges went on vacation in the morning. ISHR experts express their concern about the organization of the trial, as representatives of both parties do not live in Kiev and travel to a hearing for more than 500 km. Note that according to the lawyer of Pavel Volkov, the prosecution knew in advance about this situation, therefore, the prosecutor requested to participate in the video conference.

Poor organization of the trial is one of the factors that violates the principle of reasonableness of the deadlines for judicial review. The ECtHR has repeatedly drawn attention to the importance of adhering to this principle in criminal proceedings. In its case-law, the Court formulated the main criteria, guided by which it is possible to correctly resolve the issue of the reasonableness or unreasonability of the time limits for legal proceedings. In determining whether the length of the criminal proceedings was reasonable, the Court takes into account such factors as: the complexity of the case, the applicant's conduct and the actions of the relevant administrative and judicial authorities ("Koenig v. Germany", para. 99; "Nijmeister v. Austria", para. 21; "Ringelsen v. Austria", para. 110). Undoubtedly, judges, like all other people living in the territory of Ukraine, labor legislation guarantees the availability of annual vacation, and the judge has the right to go on leave at any time, but one should not forget about the obligation of the court to duly notify the appointment and adjournment of the court session.

The ECtHR in the case of "Smirnov v. Ukraine", noted that the inability of the court to effectively counteract barriers to the movement of the case in bad faith created by the participants of the case is a violation of Part 1 of Article 6 of the Convention. From this legal position, we can conclude that the court, as a participant in the proceeding, can also create unscrupulous barriers to the movement of the case and thereby violate Part 1 of Article 6 of the Convention.

3.71 The trial of Viktor Yanukovich

Monitoring the trial of V. Yanukovich (court hearing 01.20.2020)

On January 20, a hearing was held in the Kiev Court of Appeal in the case of ex-president of Ukraine V. Yanukovich. A year ago, on January 24, 2019, the Obolonsky District Court of Kiev passed a verdict on ex-President of Ukraine V. Yanukovich, convicting him of high treason (Article 111 of the Code of Criminal Procedure) and complicity in the planning, preparation and conduct of an aggressive war (Articles 27, 437 of the Code of Criminal Procedure).

The session began with a slight delay due to the employment of the board in another trial. At this session, as at the previous ones, the court listened to the legal position of the defense, asking clarifying questions.

Lawyers raised the issue of violation of the terms of the pre-trial investigation. It should be noted that the case of V. Yanukovich was separated from another criminal proceeding, therefore, the defense believes that the countdown began from the moment the statements were submitted to the Unified Roster of Pretrial Investigations, and not from the moment the materials of the case were allocated and the notice of suspicion was handed to V. Yanukovich. The prosecution did not agree with this position, and noted the following among its arguments: the Ukrainian Criminal Procedure Code as amended in 2016 did not contain a peremptory norm that would

regulate the matter of counting the terms of a pre-trial investigation depending on the allocation or combination of case materials, therefore prosecutors believe that the countdown of the pre-trial investigation began from the moment the materials of the case were allocated.

Further, lawyers raised the issue of violation of the principle of a fair trial, in particular, pressure on the court. Thus, the defense believes that the ex-Prosecutor General of Ukraine knew about the composition of the board of the court, which will consider this criminal proceedings, even before the automated distribution of judges, since Y. Lutsenko confirmed the information of a Ukrainian journalist who published an article with the names of the future board of the judges. According to article 6, paragraph 1, of the European Convention on Human Rights and Fundamental Freedoms, anyone charged with the criminal law “has the right to a fair hearing. . . an impartial tribunal. . .”. ISHR experts express their concern about the possible violation of the principle of a fair trial, since compliance with this principle is an integral element of any legal state, in addition, this principle acts as a kind of guarantee that the accused will be able to use the vast majority of his criminal procedure rights, as “Fair trial” includes the presumption of innocence, the right to a defense, etc. The right to a fair trial, according to Article 6 § 1 of the Convention, requires that the case be examined by an “independent and impartial court” established by law. This expression reflects the rule of law, which is an integral part of the protection system established by the Convention and its Protocols (“Jörgich v. Germany”, “Rickert v. Poland”). “Law” within the meaning of paragraph 1 of Article 6 includes, in particular, legislation governing the establishment and competence of the judiciary, as well as any other provision of national law that, if violated, will make it illegal for one or more judges to take part in the proceedings (“Gorgiladze v. Georgia”, “Panjikidze and Others v. Georgia”).

In addition to all of the above, the court considered the issue of abuse of the right by lawyers. The presiding judge asked the defense

a number of questions about the grounds for a significant number of challenges of the panel of the court of first instance in order to determine whether the challenges had the ground or were a manifestation of an abuse of the right (as one of the judges of the Obolonsky district court stated at one time). It is worth noting that the category of abuse of rights is known not only to Ukrainian judicial practice, but also to international law and the practice of the ECtHR. So, in article 17 of the “Convention for the Protection of Human Rights and Fundamental Freedoms” dated 04.11.1950r. ETS N 005 “Prohibition of abuse of rights” provides that “Nothing in this Convention shall be construed as giving any state, group or person the right to engage in any activity or to perform any action aimed at the abolition of any rights and freedoms recognized in of this Convention, or to limit them to a greater extent than provided for in the Convention”.

Monitoring the case of Viktor Yanukovich (session May 12, 2020)

On May 12, 2020, a continuation of the court session in the case of the ex-president of Ukraine V. Yanukovich, accused of opposing the Maidan in 2014, took place in the Pechersky District Court of Kiev.

IV President of Ukraine Viktor Yanukovich is suspected of organizing the persecution and killings of participants in mass protests from February 18 to February 20, 2014 in Kiev and other Ukrainian cities. He is charged with part 3 of article 28 - commission of a crime by a group of persons or a criminal organization by prior conspiracy, part 1 of article 109 - seizure of state power, part 2 of article 115 - intentional killing of two or more persons in a manner dangerous to many people by way of preliminary conspiracy as part of an organized group, part 2 of article 121 - intentional grievous bodily injury, article 340 - illegal obstruction of the organization or holding of meetings, rallies, demonstrations, part 3 of article 365 - abuse of power or authority.

At this session, the investigator’s request for a measure of restraint in the form of detention, which the prosecutor read out, was considered.

The hearing began with the fact that one of the lawyers filed a motion to return the prosecution in question, as he is convinced that the terms of the pre-trial investigation of the case have long been completed, referring to the norms of the law (part 1 of article 5, article 294, article 295 Code of Criminal Procedure of Ukraine). The lawyers also believe that the prosecution, using political motives to continue the consideration of the case, referred it to the court much later than the CPC provides. Advocates note that the actions of the prosecutor's office are illegal, and it exceeds its authority.

The prosecutor indicated that he had requested the Deputy Prosecutor General to count and extend the length of the pre-trial investigation to 12 months. At the time of the application and the decision, the total period of pre-trial investigation was 8 months and 25 days. And due to the need for procedural actions, there was a need to extend the pre-trial proceedings.

The ECtHR has repeatedly stated that the reasonableness of the proceedings should be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the applicant's conduct and the conduct of the relevant authorities (para. 38 of the "Golovkin v. Russia" case, para. 67 of the "Pelisier and Sassi v. France" case, para. 99 of the "Konig v. Germany" case, para. 21 of the "Nijmeister v. Austria" case, para. 110 of the "Ringeisen v. Austria").

It should be noted that the ISHR observers began monitoring this case in November 2017 (the case itself has been under consideration since 2014) and its consideration is still at the pre-trial stage. In the decision in the "Merit v. Ukraine" case dated March 30, 2004, the ECtHR noted that the countdown of the criminal case to resolve the issue of its "reasonableness" in the sense of Part 1 of Article 6 of the Convention begins with the identification of the attitude of state bodies to a person as a suspect or as an accused of a crime. In particular, the countdown of the proceedings may begin from the day: the person is taken into cus-

tody; notifications of his initiation of criminal proceedings against him; start of pre-trial investigation. Thus, the only known period for the review of this case is 31 months (since November 2017).

Also, the defense noted that at the first hearing on this production the issue of the necessity of involving victims in this case was raised. But for today, the victims did not appear at the hearing. The defense believes that it is important that they or their representatives arrive in order to find out the whole truth about the Maidan in 2014, based on the materials available as well as those investigated during the court hearing, and not through media statements or social media posts. Therefore, lawyers believe that without the participation of victims, the prosecutor's office failed to attend, it is impossible to listen to this case. The prosecutor objected to the petition of the lawyers, referring to the fact that the Criminal Procedure Code of Ukraine does not provide for the participation of victims in the examination of the petition for the application of a measure of restraint (Article 193). He also noted that the victims know about this hearing, and the court provided the broadcast, that is, they did not restrict anyone in knowing the truth. The court refused to satisfy this petition in the way that the broadcast was ensured, and the CPC limits the circle of participants in the hearing when considering the petition for choosing a measure of restraint.

The judge also dismissed the defense's motion to challenge the prosecutors, as he regarded it, and other motions as unfounded. In support of its decision, the court referred to the presence of abuse of procedural rights committed by lawyers earlier. It is necessary to dwell separately on the issue of abuse of procedural rights by lawyers. For example, in March 2018, the Ukrainian National Bar Association (UNBA) already considered the issue of abuse by V. Yanukovich's lawyers of their procedural rights in this case. Member of the Parliament of Ukraine M. Nanyem accused lawyers of pressure on "public defender" I. Angelin (in connection with which a criminal case was opened against the lawyers of the ex-president),

however, representatives of the UNBA stated that information about the pressure was not confirmed. On the contrary, at a meeting of the UNBA committees revealed facts of pressure on the lawyers of V. Yanukovych by the General Prosecutor's Office. Moreover, on December 29, 2018, the aforementioned criminal cases against the ex-president's lawyers were closed. Nevertheless, at a session on May 12, 2020, the judge reiterated that there had been abuses by lawyers in the past, although, as practice shows, such charges were usually refuted in a detailed and objective examination.

Later, the defense announced two more motions: to summon V.F. Yanukovych and his participation in the hearing in the mode of videoconference. Lawyers continue to insist on the participation of the suspect (he himself filed the application) in a video conference mode. In accordance with international standards and obligations of Ukraine, the suspect has the right to speak remotely and answer all questions, allegations, as well as testify. The judge refused to satisfy these requests, also considering them unsubstantiated. According to the judge, in accordance with Article 193 of the CPC, these applications should not be considered when choosing a measure of restraint.

According to Article 6 of the Convention, everyone has the right to a fair trial. In its judgment, the European Court of Human Rights noted that Article 6 of the Convention guarantees the person charged with criminal offence the right to an effective participation in the trial. This right implies, among other things, the opportunity not only to attend the trial, but to hear and understand what is happening during the trial (para. 26 of the case "Stanford v. The United Kingdom", para. 78 of the case "Barbera, Messeg and Yabardo v. Spain").

Lawyers, disagreed with Judge Sokolov, and filed a motion to challenge the judge. The defense justified this by the fact that the court ignores their requests to attract victims, to ensure the participation of V. Yanukovych in hearings and so on. They note that this is not an abuse of procedural rights, which the court referred to each time after refusing to satisfy the applications submitted. The judge

again dismissed the request for his challenge, regarding it as an abuse of the right to challenge. The ISHR has repeatedly written that in cases against V. Yanukovych, courts systematically ignore Ukraine's international obligations regarding the provision of videoconferencing with a defendant outside Ukraine. In this connection, the ex-president is deprived of the opportunity to participate in court hearings.

The prosecutor continued to declare a petition in which he drew attention to the most relevant risks, justifying them with the social ties of the suspect, as well as the fact that there are circumstances (risks) that already take place: - concealment from pre-trial investigation bodies and the court; - risk of unlawful influence; - committing obstruction of criminal proceedings in another way, in particular, staying outside Ukraine, as well as evading participation in procedural actions.

In accordance with the case law of the European Court of Human Rights, a good reason for deciding on the need for a pre-trial detention of a person is the risk of obstructing the establishment of the truth in the case and of hiding from justice. It is noted that the danger of obstructing the establishment of the truth in the case and hiding from justice can be measured by the severity of the possible punishment in conjunction with the availability of data on the material, social situation of a person, his relations with the state in which he is persecuted and international contacts (para. 85 of the case "Satretdinov v. Russian Federation"). It is worth paying attention to the fact that the location of V. Yanukovych is known and he himself filed a statement of desire to participate in the hearings.

Lawyers also drew attention to the fact that the prosecutor used only 15% of all evidence (out of 15 volumes) in the petition, therefore they believe that the prosecutor's office conceals Maidan's crimes using its official powers starting from the petition filed with the court and materials, positions, which they declare.

The investigating judge considered proved the presence of risks under paragraphs 1, 3, 4 of Part 1 of Article 177 of the Code of Criminal Procedure of Ukraine, namely the fact that V.

Yanukovych being at liberty may attempt to hide from the preliminary investigation bodies and the court, influence witnesses, and also otherwise impede criminal proceedings, which indicates the existence of reasonable risks under Article 177 Code of Criminal Procedure of Ukraine.

The court granted the request for a measure of restraint in the form of detention without the right to deposit bail. The International Society for Human Rights will continue to monitor and refine the details of this proceeding.

Monitoring of criminal proceedings of Viktor Yanukovych (hearing 12/09/2020)

On December 9, 2020, the Pechersk District Court of Kiev continued the consideration of the case of ex-President of Ukraine Viktor Yanukovych, suspected of opposing the 2014 Maidan.

IV President of Ukraine Viktor Yanukovych is suspected of organizing the persecution and murder of participants in mass protests in the period from 18 to 20 February 2014 in Kiev and other cities of Ukraine. He is charged with Part 3 of Art. 28 - commission of a crime by a group of persons or a criminal organization by prior conspiracy, Part 1 of Art. 109 - seizure of power, Part 2 of Art. 115 - willful murder of two or more persons in a way dangerous for many people, by prior conspiracy as part of an organized group, Part 2 of Art. 121 - intentional grievous bodily injury, Art. 340 - illegal obstruction of the organization or holding of meetings, rallies, demonstrations, Part 3 of Art. 365 - abuse of power or official authority.

The subject of this court session on December 9, was the consideration of the petition for the selection of a measure of restraint. Let us remind that on May 12, 2020, the Pechersk District Court of Kiev granted the petition of the prosecutor's office to choose a measure of restraint for V. Yanukovych in the form of detention. But on November 16, the Kiev Court of Appeal overturned this decision and sent the case file for consideration to the court of first instance.

However, the hearing began with an entirely different motion. Prosecutor Y. Simonov filed

an application through the office of the court to dismiss the lawyer A. Goroshinsky, but since he could not appear at the hearing, due to participation in another proceeding, a group of prosecutors of this criminal proceeding asked the court to consider and support the application.

The statement is motivated by the fact that the lawyer has a conflict of interest, since in the "the Maidan case" he represents the defense of the suspect V. Yanukovych, and also protects the victim Voloshina, the wife of a law enforcement officer V. Bulitko, who died on February 18, 2014, and at the same time is a representative and defender of two ex-policemen of the special unit "Berkut" A. Marinchenko and P. Ambroskin in the Svyatoshinsky district court in the case against the officers of the "Berkut".

The defense lawyers also asked the court to give them time to familiarize themselves with this application, which was filed in a sufficiently large volume together with the procedural documents, in order to ensure the proper right to defend their client.

After consulting on the spot, the court announced a break for one hour in order to provide time for familiarization with the statement on the challenge of the defense.

Immediately after the end of the break, the prosecution filed a motion to add new evidence to the application for recusal, including a CD. The prosecution also referred to Paragraph 1 of Part 2 of Article 78 of the current Criminal Procedure Code of Ukraine, which indicates a direct imperative prohibition on the right of a person to participate in the same criminal proceedings as a defender or representative in the event that he provides or previously provided legal assistance to a person whose interests are contrary to the interests of the person who has applied for legal assistance.

It should be noted that since the court has the right to take into account only those documents and materials with which the participants and parties of the proceeding are familiar, it is not clear why the prosecutors for which this evidence was not presented simultaneously with the application for recusal.

Having heard the opinion of the parties, the

court was forced to re-adourn to provide the defense with an opportunity to get acquainted with the new evidence.

After familiarizing themselves with the presented materials, the lawyers filed a petition to summon the wife of the deceased law enforcement officer V. Bulitko (whom the prosecution called the victim) to the court session to clarify her legal status in this criminal proceeding, since the lawyer A. Goroshinsky argued that this person is a victim in a completely different criminal proceeding, where he represents her. Thus, according to the defense, the arguments of the prosecution do not correspond to the reality and the factual circumstances of the case, and the classification of this situation in accordance with Paragraph 1 of Part 2 of Article 78 of the CCP, to which the prosecutors refer, is incorrect.

In addition, the lawyers stated that the issue of a conflict of interest, if it arises, should be resolved directly by the client and his lawyer, and not by the representatives of the prosecutor's office, since according to Article 9 of the Rules of advocate ethics approved by the Congress of Lawyers on 06/09/17, if the information from a client to whom he provided professional legal assistance is related to the interests of a new client in the provision of legal assistance, the lawyer is obliged to obtain the written consent of clients between whom a conflict of interest has arisen.

In confirmation of compliance with the norms of the abovementioned law and refutation of the arguments of the prosecution about the challenge, A. Goroshinsky was provided with the conclusion of the Council of Advocates of Ukraine that he had no conflict of interest in relation to these persons and a certified statement from V. Yanukovych, which says that he does not see a conflict of interest in this situation and does not object to the lawyer representing the interests of A. Marinchenko and P. Ambroskin. A similar application was filed on behalf of former Berkut officers, which contained information about permission to represent their interests and awareness of this situation.

After consulting, the court decided to refuse

to satisfy the prosecutor's motion to dismiss the lawyer A. Goroshinsky and, therefore, did not satisfy the defense's motion to summon the wife of the deceased law enforcement officer V. Bulitko for interrogation.

After this decision was made, the defense side filed a response motion to disqualify prosecutors A. Donsky and D. Ivanov, arguing that the defense doubted their impartiality. According to the prosecution, this behavior of the lawyers is evidence of their abuse of the right to challenge. The court also decided to refuse to satisfy this petition.

Moreover, the court also refused to involve the victims in the proceeding, which was requested by both the prosecution and the defense. It is worth noting here that the defense has already repeatedly asked to involve the victims in the proceeding, which, in their opinion, is necessary to ascertain the authenticity of all the circumstances of the case. This position of the court can be regarded as unwillingness to understand the true essence of what is happening, and unjustified haste regarding the decision of the case. Moreover, the court refused due to the fact that this session is intended only to resolve the issue of a measure of restraint.

As for the petition to choose a measure of restraint, the prosecutors on this issue asked to attach documents on the international search for V. Yanukovych to the materials of the petition.

It is important to note that in the current Criminal Procedure Code of Ukraine, Paragraph 2 of Article 184, in this regard means that a copy of the petition and materials that justify the need to apply a measure of restraint is provided to the suspect, the accused no later than 3 hours before the start of the consideration of the petition. But, despite this, the court considered the materials provided by the prosecution as not new to the defenders, therefore, decided to grant the petition. According to the observer of the ISHR, this is a direct violation of procedural rules and the principle of equality of arms, guaranteed both by national legislation and by the ECtHR.

The European Court of Human Rights re-

calls that one of the requirements of a fair trial is equality of arms, which implies the obligation to provide each party with a reasonable opportunity to state their position in conditions that do not place them at a clear disadvantage compared to their opponent (“Mahfi v. France case”, par 26); In the case of “Ruiz-Mateos v. Spain”, para. 63 states that the right to a competitive proceeding means an opportunity for the parties to know and comment on the observations provided or the evidence made by the other party.

In addition, lawyers of V. Yanukovych filed a petition demanding to ensure his personal participation in the hearing by videoconference. The prosecutors, in turn, opposed the granting of this request, continuing to talk about the impossibility of carrying out such a procedure, due to the fact that the suspect is on the wanted list, and the Russian Federation refuses to provide legal assistance on this issue. Lawyers, on the other hand, continue to insist on the real availability of information about the whereabouts of V. Yanukovych and his personal desire to take part in the hearing via videoconference (It should be noted that back in 2016, V. Yanukovych was given the opportunity to testify via videoconference in court in the case of the shooting on the Maidan, after which any statements by the defense about his participation in the court hearings are rejected, although the location has not changed).

At this hearing, the court also ruled on the spot to refuse to satisfy this request, referring to Paragraph 6 of Art. 193 of the Criminal Procedure Code of Ukraine: the investigating judge, the court may consider a petition for choosing a measure of restraint in the form of detention and choose such a measure of restraint in the absence of the suspect, the accused, only if the prosecutor, in addition to the existence of the grounds provided for in Art. 177 of this Code, proves that the suspect, the accused is on the international wanted list. When making the decision, the court noted that the right to fair trial is not violated in this way, but will be realized through representatives.

It is important to clarify here that in ac-

cordance with international norms and obligations of Ukraine, a suspect has the right to speak remotely and answer all questions, accusations, and also give testimony, especially if the suspect himself asks about it, and besides, this is not the first time (at the session dated 12.05.2020, the court also refused to satisfy the request for V. Yanukovych’s participation in the session in the video broadcast mode when considering the issue of choosing a measure of restraint, similarly referring to the norm of Art. 193 of the Criminal Procedure Code).

Article 6 of the Convention recognizes for the accused the right to real participation in the proceeding. This implies, among other things, the right not only to be present at the proceedings, but also the right to be heard and to participate in the debate. Inherent in the very concept of an adversarial proceeding, these rights may equally derive from the guarantees set out in Parts c), d) and e) of Article 6 par 3: the right to “defend oneself in person”, “to interrogate witnesses testifying against him or to have the right to have these witnesses questioned”, “use the free help of an interpreter if he does not understand the language used in court, or does not speak this language.” (“Stanford v. the United Kingdom”, para. 26).

Moreover, as mentioned above, V. Yanukovych has already taken part in the court session via video link (in the case against the ex-Berkut officers), which confirms the real opportunity to grant him the right to appear directly before the court and personally participate in the trial in the format of a video conference.

Thus, the ISHR once again notes the problem with the exercise of the right to personal participation in the court, which arose in connection with the unregulated format of V. Yanukovych’s participation in this proceeding. The regularity of this problem in cases against V. Yanukovych may indicate a violation of the right to a fair trial, despite the judge’s assurances that there is no such violation (since when choosing a measure of restraint, the suspect is not even allowed to be heard and to give appropriate arguments in his defense).

In addition, according to the observer, the actions of the court that violate the norms of international law testify to the dependence of the judicial proceeding on the political situation.

The suspect's lawyers insisted on giving them time to familiarize themselves and the possibility of preparing substantiated written objections to the materials submitted by the prosecution. In this regard, the court again announced a break for 3 hours to provide the defense party with such a right. But at the same time, it should be noted that the court session lasted more than eight hours, and the break was announced at 9:45 pm to 00:45 am, which directly contradicts the norm of Para. 1 of Art. 322 of the CCP, which says that the trial takes place continuously, except for the time of rest. The indicated time clearly cannot be called a working time, which in itself is a direct violation of procedural norms.

Referring to the practice of the ECtHR, it should be noted that the European Court of Human Rights considers it important that not only the accused, but also their defenders have the opportunity to follow the course of the trial, answer questions and make statements without being overly tired. Likewise, it is imperative that judges exercise their full capacity for concentration and attention to follow the proceeding and be able to make an informed decision. Thus, for example, in the "Mahfi v. France" case, para. 40, the applicant argued, in particular, that the late hour at which his lawyer had to appear before the jury and the length of the trial violated his defense rights under Para. 1 and 3 of Article 6 of the Convention. The Court also held that, in this situation, there had been a violation of para. 3 of Article 6 of the Convention taken in conjunction with para. 1.

Due to the late time and the impossibility of technically preparing to discuss the issue of a measure of restraint, as well as agreeing on their legal position with the client, the lawyers sent a corresponding request to the court's email address with a request to determine the date of the next court session at the proper working time.

But after about an hour, the panel of the court and the prosecution returned to the courtroom to continue the consideration of the case. The court, however, without any examination of the reasons for the non-appearance of the lawyers, promptly made a decision to involve the public defender in the consideration of the petition. At the same time, according to the lawyers, they were not even notified of the change in the length of the break. And the defense lawyers never received an answer to their petition to set a different time for the hearing.

The International Society for Human Rights has repeatedly written about the tendency in criminal cases to replace "inconvenient" lawyers with passive "public defenders". This problem can be traced not only in the cases against Viktor Yanukovich, but also in many others, for example, in the case of Alexander Filtsev, when considering a petition for a measure of restraint, the lawyers did not physically have time to appear in court (through the fault of the court itself, which notified them of the hearing just a few hours before it began), against the will of the accused himself, the judge ruled to appoint a public defender, thereby violating the right to defense.

In the report "Monitoring the observance of the right to a fair trial in Ukraine" for 2017, the ISHR has already indicated that the abuse of the public defenders is one of the main negative trends that hinder the realization of the rights of defendants and accused.

Monitoring of the case of V.F. Yanukovich (from 12.22.2020)

On December 22, 2020, a hearing on the case of the fourth President of Ukraine Viktor Fedorovich Yanukovich (No. 757/16624/20-k) supposed to be held in the Pechersky District Court of Kiev.

A series of proceedings related to the mass protests on the Maydan in Kiev in 2013-2014 are still being investigated and considered. In particular, several cases were opened against V.F. Yanukovich. This proceeding, which is still at the pre-trial stage, is based on the ex-president's suspicion of organizing the per-

secution and murder of participants in mass protests in Ukraine from February 18 to 22, 2014. He is charged with Part 1 of Art. 109 (seizure of state power), Part 2 of Art. 115 (deliberate murder of two or more persons in a manner dangerous for many persons by prior conspiracy as part of an organized group), Part 2 of Art. 121 (intentional grievous bodily harm), Art. 340 (illegal obstruction of the organization or holding of meetings, rallies, demonstrations), Part 3 of Art. 365 (abuse of power or official authority).

On December 22, the court was supposed to consider the petition of the prosecutors to choose a measure of restraint for the suspect V.F. Yanukovich, but before the hearing itself it became known that the prosecutors also filed a petition to clarify the decision of the Kiev Court of Appeal, after which all the materials of the case were submitted to appeal (recall that the petition for the selection of a measure of restraint was sent back at the end of April 2020. On May 12, a decision was made to arrest V.F. Yanukovich in absentia, but on November 16, 2020, the decision was canceled).

The lawyers believe that the reason for such “disruption” of the session by the prosecutors was that at the previous session the prosecutors again filed a motion to choose a measure of restraint, however, in order to do this procedural action in the absence of the suspect, except for the grounds provided for by Article 176 of the CCP, it is necessary to prove that he is on the international wanted list and, accordingly, the investigating judge demanded evidence from the prosecution as required by the procedure of special pre-trial investigation.

In accordance with the legislation, the decision to declare a person on the international wanted list on the basis of a request from the National Central Bureau (NCB) of Interpol in Ukraine is made by the General Secretariat of Interpol or the NCB of Interpol of the respective country. The provisions of Art. 281 of the Criminal Procedure Code of Ukraine provide that information on the declaration of a person on the international wanted list must be entered in the Unified Register of Pre-trial Investigations. But, since there is no

note in the Register that V.F. Yanukovich is on the international wanted list, then, accordingly, the prosecutor’s office was unable to collect information and submitted materials that are already in the case, as the defender notes. And in the ruling of the Kiev Court of Appeal of November 16, 2020, which canceled the arrest in absentia of V.F. Yanukovich, it is also indicated that the suspect is not on the international wanted list.

It should be noted that this criminal proceeding was opened on February 25, 2014 and is still at the stage of pre-trial investigation (for more than six years), while Part 2 of Art. 219 of the Criminal Procedure Code of Ukraine for this kind of proceeding provides only eighteen months for a maximum period of pre-trial investigation. That is, in spite of everything, the problem of violation of reasonable time limits, which was noted by the ISHR observers in many reports, as well as highlighted in the 2019 Report, continues to exist.

According to the decisions of the ECtHR, the reasonableness of the length of the proceedings is determined taking into account the circumstances of the case, which require an assessment in aggregate (“*Boddaert v. Belgium*”, para. 36). In determining whether the length of the criminal proceedings was reasonable, the Court shall take into account factors such as the complexity of the case, the applicant’s behavior and the actions of the relevant administrative and judicial authorities (“*Konig v. Germany*”, para. 99; “*Neumeister v. Austria*”, para. 21; “*Ringeissen v. Austria*”, para. 110; “*Pelissier and Sassi v. France*”, para. 67, “*Pedersen and Baadsgaard v. Denmark*”, para. 45). The complexity of the case may be due, for example, to the number of charges, the number of witnesses and defendants participating in the proceedings, or the international aspect of the case (“*Neumeister v. Austria*”, para. 20). But, nevertheless, the ECtHR also notes that although the case may be quite complex, the Court cannot consider long periods of unreasonable inaction as “reasonable” (“*Adiletta v. Italy*”, para. 17).

According to para. 1 of Art. 6 of the Human Rights Convention, everyone has the right to

a fair and public hearing within a reasonable time by an independent and impartial tribunal. This right is violated and even though some procedural actions are being taken, anyway one of the reasons for such a lengthy consideration may be the situation that prosecutors very often submit groundless petitions, for example, about the recusation of judges or the recusation of defenders of V.F. Yanukovich (again filed and will be considered by the court at the next hearing), which entails an unreasonable significant delay in the investigation of criminal proceedings. The European Court of Human Rights only takes into account delays in its decisions, sometimes referred to as “significant periods of inactivity”, which are believed to be the fault of the authorities. Delays due to the applicant’s fault, whether intentionally or not, are not taken into account in assessing a “reasonable time” (“H. v. The United Kingdom”, para. 45).

3.72 The trial of Alexey Yarkovoy

Monitoring the case of Alexey Yarkovoy (session on January 31, 2020)

On January 31, 2020, a session was held in the Zhovtnevy District Court of Zaporozhye in the case of Yarkovoy Alexei, accused of committing criminal offenses under Part 1 of Article 307 and Part 2 of Article 309 of the Criminal Code of Ukraine (illegal production, manufacture, acquisition, storage, transportation, transfer or sale of narcotic drugs, psychotropic substances or their analogues and illegal production, manufacture, purchase, storage, transportation or transfer of narcotic drugs, psychotropic substances or their analogues without the purpose of sale).

During the trial, the prosecutor filed requests for an examination of the drugs found on the defendant, as well as for the inclusion in the case file of the results of the search, inspection of telephones, SIM cards, memory cards and other documents. All requests were granted by the court, no objections from the defense were received.

Due to the need to familiarize themselves with the new evidence attached, the court decided to check the video, which is on the memory card provided by the prosecutor. But due to technical problems in this court session, the parties could not study the information from the video. To ensure the possibility of researching video materials, the court announced a break.

In this hearing, there were no violations of the lawfulness of the trial and the right to a fair trial of the participants in the trial.

3.73 The trial of Zinchenko and others

Monitoring of the trial of S. Zinchenko, P. Ambroskin, A. Marinchenko, S. Tamtura, O. Yanishevsky (session on 03/17/2020)

On December 29, 2019, under the Norman format, an exchange took place between Ukraine and the Uncontrolled regions of Eastern Ukraine. Five ex-officers of riot police unit “Berkut” (S. Zinchenko, P. Ambroskin, A. Marinchenko, S. Tamtura, O. Yanishevsky) also got on the exchange lists. The International Society for Human Rights has been monitoring the case for two years. On February 8, two of them (A. Marinchenko, From Tamtura) returned to Ukraine. Their lawyer A. Goroshinsky published on social networks an open appeal of his clients to the President of Ukraine V. Zelensky in which ex-Berkut officers asked to declare unconstitutional the Law of Ukraine “On Preventing Persecution and Punishment of Persons About Events that Occurred During Peaceful Meetings”, and also adopt a law, which would exempt from the responsibility of both protesters and law enforcement officials.

It is worth noting that the ex-policemen commented on their consent to the exchange as follows: “We agreed to the exchange only so as not to disrupt it. A measure of restraint in the form of round-the-clock house arrest was applied to us (A. Marinchenko, S Tamtura), and our comrades (3 other accused in this case) were detained. The exchange of ‘all for all’ was an opportunity for their release”.

In addition, the returning defendants stated that they would continue to take part in court hearings, as they wanted to restore the honest name of the “Berkut” special police unit.

It is important to highlight the fact that before the exchange in the framework of the Norman format took place, for all the suspects and accused who participated in this exchange, the court changed the measure of restraint to a personal obligation. ISHR experts express their concern about this fact, since a measure of restraint in the form of a personal obligation implies a certain list of those obligations that are imposed on the accused, among other things, to come to court upon request. Considering that the criminal cases were not closed, which means that they will continue to be considered in court, the question arises, how, in fact, they will be considered without the participation of the accused. Suppose a hearing is scheduled, the parties are called, including the accused, the latter did not appear for objective reasons, and thereby violated the obligations imposed on them, a possible logical procedural result is the announcement of the accused as missing. That is, it turns out that the court knows where the accused are located, the court itself gave tacit consent to this, changing the measure of restraint to the accused, and the court now has no choice but to put the accused on the wanted list to smooth out this procedural conflict. The ISHR experts tried to find out from representatives of the legal profession and the judiciary how to process the exchange of “all for all” in order to avoid the above situation, but no one was able to answer

this question because it is not regulated at the legislative level.

Let us return to the circumstances of the case and recall that this criminal proceeding has been examined for more than 5 years and during almost all this time all five accused were in jail. For A. Marinchenko and S. Tamtura the measure of restraint was changed only in the second half of 2019. Such a lengthy trial using a measure of restraint restricting the freedom of the accused may raise doubts from an independent observer regarding the reasonableness of the time of both the criminal investigation itself and the stay of the accused in jail. Undoubtedly, this is a resonant case for Ukraine, our judiciary has never encountered cases of such complexity, we note that the complexity of the case is one of the criteria of the ECtHR in determining whether the length of the criminal proceedings was reasonable (“Konig v. Germany”, para. 99), but, for example, in the case of “Rui v. France”, paragraph 29, the ECtHR concluded that despite the complexity of the case due to the number of persons to be interrogated and technical materials to be examined in the case, the reasonable time for consideration of the criminal proceedings was exceeded (the case was considered for 5 years and 11 months).

On March 17, the Svyatoshinsky District Court of Kiev was to hold the first court hearing after the return of the two accused, but in connection with the quarantine announced in Ukraine, the court decided to postpone the hearing until June 4.

The Report is prepared by

Anton Alekseyev Director of the Information and Analytical Center of the ISHR, coordinator of the project “Strengthening the Rule of law in Ukraine”;

Anastasiia Alekseyeva Coordinator of the monitoring group of the ISHR, expert of the Information and Analytical Center of the ISHR;

Ilya Dikarev Researcher at the Institute of Optimization of the Brandenburg Technical University;

Lyudmila Korol lawyer, member of the monitoring group of the ISHR.

The report is prepared in cooperation with the CIVIL DEVELOPMENT CENTER.