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THE OBSERVANCE OF HUMAN RIGHT TO FREEDOM FROM TORTURE IN PROFESSIONAL ACTIVITY OF THE NATIONAL POLICE OF UKRAINE (ARTICLE 3 OF THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS)

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Abstract

The article considers the issue of observance by the bodies of the National Police of Ukraine of human right to freedom from torture or inhuman treatment or punishment.

The practice of the European Court of Human Rights testifies that Ukrainians are increasingly applying to the Court for violations of the prohibition of torture or inhuman treatment by the police.

The authors noted that the responsibility of the bodies of the National Police of Ukraine to prevent violations of human rights to freedom from torture or inhuman treatment was enshrined both in national law and in international legal documents, especially in the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The application of the provisions of the Convention, as well as the decisions of the European Court of Human Rights as an integral part of its law enforcement practice, will contribute to the development of the protection of human rights in Ukraine.

Summarizing the practice of the European Court of Human Rights in relation to Ukraine regarding violations of Article 3 of the Convention, the authors of the research singled out certain requirements that are binding on the bodies of the National Police of Ukraine.

The observance of national legislation, application of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights will contribute the increasing of the public trust and respect for the law enforcement agencies, including the National Police of Ukraine and improving the efficiency of the Ukrainian justice system.

Keywords

Torture or inhuman treatment, or punishment; European Court of Human Rights; Convention for the Protection of Human Rights and Fundamental Freedoms; National Police of Ukraine.

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Introduction

One of the most important tasks of the state is to abide Article 3 of the Constitution of Ukraine on the protection of human's life and health, honour and dignity, inviolability and security. In order to protect these rights and freedoms of citizens of Ukraine, the Fundamental Law (Article 28) states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment [1].

Adhering to the specified constitutional requirements is the main duty of law enforcement bodies of Ukraine, in particular the bodies of the National Police of Ukraine, which take actions to eliminate the threats to the life and health of individuals and public security resulting from a criminal offense (Article 23 of the Law of Ukraine "On the National Police")[2].

Accession to the Council of Europe and ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 in July 17, 1997 incorporated Ukraine in the European system of human rights protection, which includes not only the obligation to protect and observe the rights and freedoms enshrined in the Convention, but also recognition of the jurisdiction of the European Court of Human Rights. At the same time, this means that the activities of all public authorities of Ukraine, in particular, judicial and law enforcement agencies, their decisions and procedures, which are used, should not be in conflict with the provisions of the Convention.

The observance of human rights by the National Police of Ukraine is increasingly becoming the subject of discussion in the media, in academic community, and is the focus of contentious political debate. Certain cases of torture, ill-treatment, use of evidence obtained through inhuman treatment, lack of effective investigation of applications and communications on this issue cause a serious public response and adversely affect the credibility of the police authorities and the entire national law enforcement system.



According to Clause 4 of Article 7 of the Law of Ukraine "On National Police of Ukraine": "Police officers under any circumstances are forbidden to promote, perform, incite or to treat tolerantly any forms of tortures, cruel, brutal or degrading treatment or punishment. In case of identification of such actions each police officer shall take immediately all feasible measures on their suppression and it is obligatory to report on direct management on the facts of tortures and intentions of their application" [2]. However, the practice of the European Court of Human Rights testifies that Ukrainians are increasingly applying to the Court, because they were subjected to torture or inhuman treatment by law enforcement workers, including the National Police of Ukraine. The Court has already adopted a lot of decisions on Ukraine's violation of Article 3 "Prohibition of Torture" of the Convention on Human Rights and Fundamental Freedoms (182 cases for the period from 2007 to 2014) [3].

The study of decisions of the European Court of Human Rights concerning the violation of prohibition of torture or inhuman treatment or punishment promotes the interaction of European law with the national law of the states parties to the specified conventions, enabling them to fulfill duly their international legal obligations. Moreover, in 2006 the Law of Ukraine "On the Implementation of Decisions and Application of the European Court of Human Rights Practice" was adopted. According to Article 17, the practice of this court is a source of Ukrainian law, that is, court decisions should be applied along with laws and bylaws of Ukraine [4], however, the practice shows that the police officers actually ignore the requirements of the above-mentioned decisions.

These factors determine the necessity to identify the level and nature of violations of human rights to freedom from torture or inhuman treatment by the National Police of Ukraine, to analyze the practice of the European Court of Human Rights in relation to violation of Ukraine Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms for the purpose of scientific generalization and development of requirements and standards of conduct, clear and understandable for police officers, that they must strictly adhere to in the course of professional activities, which indicates the topicality of the subject of this research.

The academic novelty of the results obtained is that the comprehensive analysis gave the possibility to formulate a scientifically substantiated statement of a theoretical and applied nature which is fully directed and can be practically used to address the issues related to the duly observance of human rights to freedom from torture or inhuman treatment by the bodies of the National Police of Ukraine.

Estimating the observance of human right to freedom from torture in professional activity of the National Police of Ukraine

The authors of the manuscript highlighted the legislative consolidation of the human right to freedom from torture or inhuman treatment, and once again proved its absolute character, the retreat from which is impossible under any circumstances. Police are one of the state institutions whose activities are aimed at respecting human rights and freedoms, including the inadmissibility of torture or inhuman treatment. Unfortunately, the practice of the European Court of Human Rights testifies to systematic violations by the bodies of the National Police of Ukraine of Article 3 of the Convention on Human Rights and Fundamental Freedoms. It is stated that the result of such violations of human



rights was the loss of public trust in the police and the national law enforcement system in general.

It is noted that the national mechanisms assigned to the police include an important role in respecting and guaranteeing the human right to freedom from torture or inhuman or degrading treatment or punishment. Summarizing the practice of the European Court of Human Rights regarding violations of Article 3 of the Convention on the Protection of Human Rights and Fundamental Freedoms, the authors have developed the requirements for the Ukrainian authorities and the National Police of Ukraine to advance effective protection of human rights and, of course, increase public trust and respect to police and the entire national law enforcement system.

One of the fundamental values of a democratic society, which is enshrined in Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, is protection of the physical integrity of a person, including from causing pain, which leads to severe physical suffering. For one, Article 3 of this Convention provides that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment" [5]. A number of other international legal instruments also prohibit torture and inhuman treatment: Article 5 of the Universal Declaration of Human Rights of 1948, Article 7 of the International Covenant on Civil and Political Rights, of 1966, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of 1984, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987, Minimum Standard Rules for the Treatment of Prisoners of 1955, Code of Conduct for Law Enforcement Officials of 1979, and many others.

Torture and inhuman treatment are one of the human rights violations that cause the greatest concern of the global community today. For a long time, torture and inhuman treatment were the main means of obtaining evidence and were widely applied during investigations by law enforcement agencies, including the bodies of the National Police of Ukraine (in the past, the militia). At the same time, the phenomenon of torture and inhuman treatment in law-enforcement agencies remains scantily explored. This is due to the long closed nature of this subject existing for many years, a demonstrative non-recognition by the officials of the character and scale of this phenomenon.

As a rule, torture and inhuman treatment almost do not exist separately from other types of official misconduct. In most cases, torture and inhuman treatment are the means by which a policeman attempts to obtain information from a person about the commission of an offense by him/her or another person in order to achieve the intended result in the official activities.

The denial of the true scale and the system of torture and inhuman treatment in the National Police of Ukraine, attention only to specific cases, the search for several guilty ones and a complaint about insufficient funding - this is how the approach of the Ministry of Internal Affairs of Ukraine to the solution of this problem looks like. Although the leadership of the state and the ministry has changed, in many respects the approaches have remained the same: the reform of those aspects of the impact of the scale of unlawful police violence is insufficient; statistics on violations committed by employees of the National Police of Ukraine do not reflect the true state of affairs; the procedure for receiving complaints about violation and the procedure for their investigation are still non-transparent and ineffective.



The statistics show that in the structure of crimes against life and health of a person, torture in Ukraine amounts to: in 2013 - 51 crimes; 2014 - 54; 2015 - 73; 2016 - 62; 2017 - 82, 2018 - 163 [6]. Moreover, police officers illegally use physical force and special means.

Criminal proceedings for deliberate bodily blows, torture or other violent acts by police officers with respect to suspects or accused are usually limited to an internal official investigation, and only 3% of the proceedings are brought to court (in most cases, these proceedings have grave consequences, or so-called public response, causing wide-scale public indignation).

Such a system of response to violations of human rights to freedom from torture or inhuman treatment by officers of the National Police of Ukraine can hardly be considered effective. That is why the level of trust in the figures given to assess the scope of unlawful violence in police is still poor. In addition, the system still has an impact on the number of such reports: every victim of torture or inhuman treatment should report it to the police or the prosecutor's office (which often delegates the case to the police for investigation). There is no point applying to the same agency whose officer has violated human rights. That is why most victims do not report it anywhere, leaving the real scope of violence hidden from statistics. Thus, the methods of collecting and evaluating statistics on violations of human rights to freedom from torture or inhuman treatment by police officers have actually remained the same as before.

In order to study the problems of unlawful violence by the bodies of the National Police of Ukraine, the Kharkiv Institute for Social Research and the Kharkiv Human Rights Protection Group conducted a monitoring sociological study, during which the following estimates were obtained:

Table 1 - Estimated number of victims of unlawful physical violence committed by police during 2004-2017

Year	Number of victims (%)	Estimated number of injured
2004	2,73	1,026,616
2004-09	3,50	1,319,500
2010	2,10	791,700
2011	2,6	980,200
2015	1,30	409,080
2017	2,0	641,326

Source: Monitorynh nezakonnoho nasylstva v militsii (2004-2017 rr.) / Kol. avt. Kharkiv, Kharkivskiy instytut sotsiolohichnykh doslidzhen, 2017. 17 p.

Table 2 - Estimated number of victims of torture committed by police during investigation during 2004-2017

Year	Number of victims (%)	Estimated number of injured
2004	0,25	93,498
2004-09	0,3	113,331
2010	0,2	75,400
2011	0,3	113,331
2015	0,2	62,935
2017	0,3	96,195

Source: Monitorynh nezakonnoho nasylstva v militsii (2004-2017 rr.) / Kol. avt. Kharkiv, Kharkivskiy instytut sotsiolohichnykh doslidzhen, 2017. 19 p.



These results of the monitoring sociological study significantly differ from the official statistics. These are not final results, but they make it possible to assess the real level of violation of the human right to freedom from torture or inhuman treatment committed by the bodies of the National Police of Ukraine.

The attitude of Ukrainians to the danger of becoming a victim of unlawful violence by police authorities is confirmed by the results of this monitoring study. (in 2009 – 2.5%, in 2010 – 1.8%, in 2011 – 1.5%, in 2015 – 1.4%, in 2017 – 3.2%). At the same time, this indicator gradually declined year after year, except for 2017 [7, p.27].

The following factors of violation of the human right to freedom from torture and inhumane treatment by the bodies of the National Police of Ukraine were put forward by Ukrainians as primary ones:

- lawlessness of officers who use unlawful methods for work - (43.5%);
- poor staff recruitment, as a result of which people with sadistic inclinations join the police (34.7%);
- poor professional and cultural level of police officers (30.5%) [7, p.36].

Responsibilities of national law enforcement agencies and in particular the National Police of Ukraine to prevent violations of prohibition of torture or inhuman treatment are the result of a long process of establishing norms of international and national legislation, as well as a no less long-term and debatable process of their coherence.

Among all existing international legal tools, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 is the most respected by the states parties in practice. This is in particular due to the fact that this Convention is legally binding on the states that have acceded to it, and the decisions of the supervisory agencies of the Convention are binding on the signatory states parties. In addition, the monitoring of the proper enforcement of human rights is carried out by the European Court of Human Rights, whose activities are regulated by the Convention, the Rules of the Court and application processing.

By ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms, Ukraine has thus recognized the mandatory jurisdiction of the European Court of Human Rights.

In accordance with Part 1 of Article 32 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the interpretation of its norms is the exclusive competence of the European Court of Human Rights. Therefore, from this perspective, the case law of the Court constitutes the official international interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms [5].

While exercising its powers to protect human rights guaranteed by the Convention, in particular the right to freedom from torture or inhuman or degrading treatment or punishment, the European Court of Human Rights takes steps aimed at approximating the laws of the States Parties and adopts decisions that directly affect their legal systems. The main purpose of the Court is to interpret and express its position on the practice of the application of the rights and freedoms proclaimed in the Convention. It is envisaged



that the state, amending its legal system as a part of implementation of the decision of the European Court of Human Rights regarding a complaint of one of its citizens, automatically prevents a similar violation of the rights of other citizens.

At the same time, the States not subject to the European Court of Human Rights decision but having legislative and law enforcement practices similar to those found by the Court as unlawful in relation to other parties to the Convention, may not wait for the decision of the European Court of Human Rights to make timely changes to their national legislation. Such a position of the European Court of Human Rights is particularly relevant in terms of the restoration and observance of fundamental human rights, including the right to freedom from torture or inhuman or degrading treatment or punishment, since the Court establishes certain standards for internal domestic application of Article 3 of the Convention and its interpretation.

Unconditional nature of the guarantee of the protection of rights contained in Article 3 also means that under no circumstances, in accordance with the Convention or another provision of international law, actions that violate this article cannot be justified. In other words, there are no factors that could be considered as justification for prohibited acts within the internal legal systems (armed conflicts, state of emergency, victim's behavior, different external circumstances, etc.) [8, p.380-381].

The answer to the question of what exactly is a "torture, inhuman or degrading treatment or punishment" depends on the circumstances of the particular case.

By dividing the terms "torture" and "inhuman treatment", the European Court of Human Rights applied the principle of determining the gravity of suffering, but under the influence of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, it transformed the position, adding to the main differences the purpose and intentional nature of such actions. Inhuman treatment is deemed both active actions and omission to act of the authorities or their employees, which caused only the moral suffering of the applicant.

There is another difference between the concepts of "torture", "inhuman treatment" and "degrading treatment", apart from the purpose, intention, gravity of suffering, which is an impairment of dignity of a particular person. It has been investigated that *torture* and *inhuman treatment* are attacks on human dignity in its absolute meaning, whereas *degrading treatment* is aimed at denigration the dignity of a particular individual. The European Court of Human Rights has also included the conditions for the detention of prisoners to the qualification of degrading treatment, emphasizing the universal character of the provisions of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, according to which detained or imprisoned persons have all the rights inherent in the dignity of each person.

Considering the issue of violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights is based on the doctrine of the minimum level of severity. The essence of this doctrine in a nutshell is that to fall within the scope of Article 3, ill-treatment must be at the minimum level of severity.

The practice of the European Court of Human Rights singles out three basic concepts, which are contained in the contents of Article 3 of the Convention for the Protection of Basic Human Rights and Freedoms regarding the degree of severity of a treatment:



- *torture* is an inhuman treatment aimed at obtaining any information or confession for further punishment;
- *inhuman treatment or punishment* is a behavior that deliberately causes serious moral or physical suffering and should not be justified in the given situation;
- *degrading treatment or punishment* is a behavior that savagely humiliates an individual before others and forces him/her to give up their will or conscience.

In assessing the level of severity, according to the European Court of Human Rights, such facts as sex, age, and health condition of the victim gain particular importance. The doctrine of the minimum level of severity itself is used to separate torture from inhuman or degrading treatment and punishment [9].

Summarizing the practice of the European Court of Human Rights in relation to cases of violation of the human right to freedom from torture or inhuman or degrading treatment or punishment, at least 5 following requirements regarding the treatment of detained and arrested persons shall be put forward to the bodies of the National Police of Ukraine:

1. Duty to report any injury that happened during a stay under the jurisdiction of police authorities.
2. Duty to provide explanations for each injury that happened during a stay under the jurisdiction of police authorities.
3. Duty to provide explanations regarding the treatment with a person during his/her stay under the jurisdiction of police authorities.
4. Duty to provide explanations on the causes of death and the medical treatment provided to that person until his/her death if the person died during the detention.
5. Duty to provide a satisfactory and plausible explanation of the causes of death if a person died while being under the jurisdiction of police authorities [10].

Analysis of judgments of the European Court of Human Rights concerning violations of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms

As a part of this study, it is important to clarify the additional requirements contained in the decisions of the European Court of Human Rights concerning Ukraine regarding violations of Article 3 of the Convention binding on the bodies of the National Police of Ukraine. In the following, we shall examine this part of the practice of the European Court of Human Rights.

The case "Kaverzin v. Ukraine" (2013). On January 12, 2001, Kaverzin O. was detained in Kharkiv by militia officers on suspicion of committing several murders and robbery.

After the detention, the applicant was taken to the militia station, where he was allegedly tortured by unknown militia officers in order to obtain testimony to commit crimes. According to the applicant, during such ill-treatment, which continued for several days thereafter, he received an eye injury which eventually resulted in him suffering a complete loss of eyesight. The applicant complained that the state authorities did not provide him with adequate medical treatment, resulting in a disability.



The applicant complained that there was no effective investigation of the beatings and torture of militia officers. In addition, in the Dnipropetrovsk colony, in spite of his blindness, every time he was taken out of the cell and during short visits with family members he was handcuffed.

The European Court of Human Rights, after considering this case, noted that there is a violation of Article 3 of the Convention. The court reiterates that Article 3 of the Convention requires the careful investigation of reasonable claims of ill-treatment. This means that the authorities should always try in good faith to find out what happened and not to rely on hasty and unreasonable conclusions to close the criminal case. The Court also considers that the non-provision of necessary medical care to persons in places of detention, which is the responsibility of the State, is a violation of Article 3 of the Convention. The Court finds that the applicant's use of handcuffs in the Dnipropetrovsk colony was inhuman and degrading treatment and that there was a violation of Article 3 of the Convention [3].

The case "*Kulik v. Ukraine*" (2015). On May 4, 2003, Kulik V. was arrested on suspicion of stealing cucumbers from a greenhouse on a vegetable farm, as well as for the commission of an administrative offense (deliberate disobedience and resistance to militia officers).

According to the applicant, on the same day, militiamen beat him at the Chervonozavodskiy District Militia Station in Kharkiv, forcing him to confess to the theft. Subsequently, the applicant granted confessionary evidence.

On May 5, 2003 the applicant turned to the hospital for medical assistance. The doctor recorded the numerous injuries on the body of the applicant and diagnosed brain concussion and a possible fractured nose. The applicant was admitted to the hospital for a course of in-patient treatment in connection with the injuries sustained.

On July 8, 2003, the applicant was inspected by a psychiatrist who had diagnosed him with a psychiatric disorder.

The applicant complained under Article 3 of the Convention that he had been subjected to ill-treatment by militia officers and that there was no effective investigation of the incident.

The European Court of Human Rights, after considering this case, came to the conclusion that the applicant's bodily injury was serious enough and his complaint of ill-treatment was reasonable in terms of Article 3 of the Convention, and therefore demanded an effective investigation to be conducted by the national authorities.

The Court considers that the medical evidence available in the case is sufficient to conclude that on May 4, 2003, on the date when the applicant was detained and he was in the militia station, he suffered a brain concussion and numerous bodily injuries. Medical evidence also suggests that from that date, he had a psychological disorder. Under these circumstances, the Court ruled that the state should be held accountable for the ill-treatment that should be qualified as inhuman and degrading treatment. Therefore, there was a violation of Article 3 of the Convention and the state should be held accountable for it [3].



The case "Serikov v. Ukraine" (2015). On May 16, 2008 Serikov S. was detained by militia officers and sent to the Kharkiv City Department of the Main Administration of Ministry of Internal Affairs of Ukraine in the Kharkiv region.

During the search of the applicant's personal belongings, the militia found a packet with the substance that, as it was later established, turned out to be cannabis.

According to the applicant he was ill-treated by the militia to make him confess at the militia station. In particular, he argued that he was threatened with rape, beaten with legs and arms on the head and body, and also threatened with weapons. The officers used the "Palestinian hanging"; with his hands handcuffed behind his back, he was hung at a height of one or one and a half meters, and then thrown on the floor face down. He lost consciousness a few times.

On May 17, 2008, the applicant turned to the medical institution, where he was diagnosed with a brain concussion, a soft tissue bruise of the head and chest. The applicant complained that he had been subjected to ill-treatment by militia officers and that the national authorities had not conducted an effective investigation of his allegations of ill-treatment. He referred to Articles 3 and 13 of the Convention.

Based on all available material, the European Court of Human Rights considers it established that all bodily injuries were caused to the applicant after his encounter with militia officers on May 16, 2008, and until he left the militia station on that day. For these reasons, the Court finds that the applicant has been subjected to ill-treatment, the state should be held accountable for, and which should be classified as inhuman and degrading. Under these circumstances, the Court concludes that the national authorities did not ensure that the applicant's allegations of ill-treatment were effectively investigated. Therefore, there was a violation of the substantial aspect of Article 3 of the Convention [3].

The case "Pomiliaiko v. Ukraine" (2017). In early November 2008, equipment was abducted from the company where Pomiliaiko S. worked. In connection with the theft, she was summoned to the Ordzhonikidzevskiy District Militia Station in Kharkiv, together with her employee.

Having arrived at the district station, the applicant was pushed into the office, handcuffed with her hands behind her back, even though she did not demonstrate resistance.

The militia officers who were present were intimidating the applicant in order to force her to confess to theft. Having failed to obtain her confession, the militia officers forced her to sit on a chair, put on a polyethylene package on her head and began to choke her. At the same time, they beat her on the head, face, and lips, so that she did not bite through the package. The applicant has lost consciousness several times. When she told the militia officers that she needed to visit the toilet room, one of the police officers hit her in the stomach and head. She lost consciousness again and involuntarily urinated. She repeatedly refused and declared her innocence. The applicant was compelled to write a statement that she had no complaints about the treatment of the militia officers with her. However, from 9 to 27 November 2008, she was in inpatient treatment in connection with a closed craniocerebral injury, brain concussion, soft tissue bruise of the head, injury of upper and lower limbs, injury of anterior abdominal wall, lumbar osteochondrosis and asthenic syndrome.



The applicant complained that she had been subjected to torture by militia officers and that there had been no effective investigation of her complaints at the state level. Although the applicant referred to the Articles 3 and 13 of the Convention, the Court considers it appropriate to study this complaint only under Article 3 of the Convention.

Taking into account all the considerations on this issue, the European Court of Human Rights considers it sufficiently established that the applicant had been subjected to ill-treatment she complained about, which is a violation of Article 3 of the Convention [3].

Thus, based on the above-mentioned decisions of the European Court of Human Rights, the Ukrainian authorities and the bodies of the National Police of Ukraine are obliged to take the following actions:

1. A special medical examination should be conducted upon the complaint about ill-treatment of the injured and his/her lawyer.
2. Police agencies are obliged to avoid any cases where the arrest of a person can be interpreted as an excuse to overcome his/her internal resistance and receive confessions.
3. Using force against detained and arrested persons, the police officers must strictly adhere to the principles of necessity and proportionality.
4. Inability to establish civil officers guilty of unlawful violence against a detained person cannot relieve the state from responsibility. Therefore, in case of a reasonable claim by a person about ill-treatment by law enforcement officers, the state should conduct an investigation, which should be: official, effective, independent, open to public control and should provide the opportunity to identify the perpetrators.

The last item deserves special attention not only because it is mentioned in many cases against Ukraine, but also because public access to the results of official investigations of ill-treatment is a rather problematic one.

Today, the practice of the bodies of the National Police of Ukraine provides the victim itself, who suffered from the unlawful actions of the police officer, with very brief information in case of confirmation of such a fact.

It is clear that such an established ill practice mitigates the attempts of non-governmental organizations to analyze the progress of official check of the facts of torture and inhumane treatment, and therefore directly contradicts the requirements of the European Court of Human Rights regarding the availability of such procedures for public control. That is why the civil society for its own part considers it necessary to set an objective for the administration of the Ministry of Internal Affairs and the General Prosecutor's Office of Ukraine to develop procedures for access of civil society institutions to the materials of investigations.

Final considerations

"The prohibition of torture is absolute, i.e. not subject to any limitation, derogation or relativisation" [11]. Summing up the material presented, we can conclude that the



problem of observance of the human right to freedom from torture and inhuman treatment in the activities of the bodies of the National Police of Ukraine remains important. This fact is confirmed by the numerous decisions of the European Court of Human Rights concerning Ukraine on violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, according to which Ukraine was found as a state violating human rights to freedom from torture or inhuman or degrading treatment or punishment.

Having analyzed certain cases of the European Court of Human Rights, the main obligations of the states under Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms may be defined. From the general obligation of the state to ensure conventional rights for each person under its jurisdiction other obligations derive connected with the enforcement and observance of only a certain right. These obligations can be negative and positive. Negative obligation of the states enshrined in Article 3 of the Convention has a conventional nature and consists in refraining from any actions which could lead to a breach of this provision. The positive obligations of states assume the use of reasonable and adequate measures to protect the rights that a person has under the Convention.

The prohibition of torture or inhuman treatment, as an international obligation of the state, correspondingly determines the responsibility of law enforcement agencies, including the National Police of Ukraine to prevent torture or inhuman treatment and to effectively investigate each such manifestation.

To reduce the level of torture and inhumane treatment by the National Police officers, it is advisable to take the following steps:

- it is necessary to develop a new system for evaluating the effectiveness of the activities of the bodies of the National Police of Ukraine at the legislative level, which completely abolishes the so-called "ticket quota" system of police work evaluation (it is necessary to abolish the establishment of plans for the disclosure of crimes for a certain period of time);
- in case of a person's detention, police officers should secure the right to access to a lawyer, the right to be examined by a doctor and the right to notify a relative or other third party of such detention;
- the legislative level should enshrine the duty of the bodies of the National Police of Ukraine to record (audio and video) all actions taking place with the participation of persons irrespective of the status (detained, delivered or visitor) who arrived to the police, with the archiving and storage of video materials;
- the administration of the Ministry of Internal Affairs and the National Police of Ukraine should ensure the development of plans for the training of employees, including teaching materials on the complete prohibition of torture or inhuman or degrading treatment or punishment, with the study of the content of specific cases of the European Court of Human Rights on the violation of Ukraine and other states of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, by generalizing clear and understandable for police officers requirements and standards of conduct which they must strictly adhere to in their professional activities;



- to ensure public access to the progress and results of investigations of violations of human rights to freedom from torture and inhumane treatment by the National Police of Ukraine.

The implementation of these recommendations by the administration of the Ministry of Internal Affairs and the National Police of Ukraine will contribute to ensuring the human right to freedom from torture or inhuman or degrading treatment or punishment in the course of police professional activity and will contribute to increasing the public trust and respect for the police and the law enforcement system in general.

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