

Report

**to the Ukrainian Government
on the visit to Ukraine
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 18 to 24 February 2014

The Ukrainian Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2015) 4.

Strasbourg, 13 January 2015

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Copy of the letter transmitting the CPT's report

Ministry of Justice
Horodetskoho Street, 13
01001 Kyiv
Ukraine

Strasbourg, 16 July 2014

Dear Madam/Sir,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of Ukraine drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Ukraine from 18 to 24 February 2014. The report was adopted by the CPT at its 84th meeting, held from 7 to 11 July 2014.

The recommendations, comments and requests for information made by the CPT are set out in bold type in paragraphs 26, 29, 34-38, 41, 43-47, 50 and 52-55 of the report. The CPT requests the Ukrainian authorities to provide **within three months** a response containing an account of action taken by them to implement the Committee's recommendations and setting out their reactions and replies to its comments and requests for information.

As regards the information requested in paragraph 51, the CPT asks that it be provided **within one month**.

The CPT would ask, in the event of the response being forwarded in Ukrainian, that it be accompanied by an English or French translation.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours faithfully,

Latif Hüseyinov
President of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

EXECUTIVE SUMMARY

Introduction

Following the much criticised public order operations on Independence Square (“*Maidan*”) on 30 November 2013, there was an ever-growing concern as to the manner in which anti-Government demonstrators (referred to as “*Maidan*” protesters) were apprehended and treated by law enforcement officials. The CPT responded to this concern, firstly by holding high-level talks in December 2013 and then by carrying out a visit from 18 to 24 February 2014. In the course of the visit, the Committee’s delegation focussed on the treatment of “*Maidan*” protesters in the context of two public order operations in January 2014 (i.e. from 19 to 23 January in Kyiv and from 26 to 27 January 2014 in Dnipropetrovsk) and during the operations of 18 to 21 February 2014 in Kyiv, which occurred during the visit.

The CPT’s findings on the treatment of protesters apprehended during public order operations

The CPT found that the deliberate ill-treatment of “*Maidan*” protesters by or with the authorisation, support or acquiescence of law enforcement officials prior to their handover to police convoy officers or investigators, was an accepted means of enforcing law and order during the public order operations at issue. In several instances, the alleged ill-treatment was of such severity that it could be considered as amounting to torture.

Grey areas

In a number of instances, there are grey areas which prevented the CPT’s delegation from gaining a clear picture of the situation. This was in particular the case of the alleged presence of foreign law enforcement officials among Ukrainian special forces in Kyiv, the possible involvement of “undercover” plain-clothed law enforcement officials in the questioning of apprehended persons in the so-called “anti-*Maidan*” protest camp in the capital city and the degree of involvement of unidentified private individuals in public order operations. In the case of Dmytro Bulatov, who was abducted and ill-treated by unidentified individuals, the possible connection of the actual perpetrators with a Ukrainian or foreign public authority remains an open question. The investigations conducted by the Ukrainian authorities failed to confirm or refute the allegations or indications received by the CPT’s delegation. The Committee requested to be kept informed of any progress made in relation to these matters.

Action proposed to combat ill-treatment and impunity

The CPT trusts that the Ukrainian authorities will do their utmost to implement the recommendations made in the report on the Committee's 2013 periodic visit. It is essential to ensure that i) within any special police units and Interior Troops in particular, torture and other forms of ill-treatment (including excessive use of force) during public order operations are not – and are not seen to be – tolerated under any circumstances; ii) the relevant legislation and regulations are reviewed in order that the use of force is better circumscribed; iii) the subsequent identification of law enforcement officials is always made possible; iv) no provision can be interpreted as allowing a delegation of police duties and powers to private individuals/entities in the context of public order operations; v) health-care professionals and investigative judges/courts are made better aware of their duties and legal obligations to prevent/combat police ill-treatment; vi) care is taken to ensure that the national preventive mechanism will meet, under any circumstances, the key requirements as laid down in the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

In order to combat impunity effectively, the CPT considers that Ukraine's prosecuting authorities must set up a national specialised "task force" to look into all cases involving alleged ill-treatment and other abuses by or with the authorisation, support or acquiescence of public officials during the "Maidan" protests and any similar events after February 2014. Moreover, a State Bureau of Investigation, as foreseen by the Code of Criminal Procedure, should be set up and developed as soon as possible and the possibility of integrating the aforementioned "task force" into this body should be examined at the earliest opportunity.

Practical operation of procedural safeguards against police ill-treatment

In both Kyiv and Dnipropetrovsk, the practical operation of procedural safeguards against police ill-treatment – in particular the rights of notification of custody and of access to a lawyer, including free legal aid – appeared to be somewhat better when compared with the CPT's findings during the 2013 visit. However, in the circumstances, the failure to provide prompt access to a doctor for persons detained by law enforcement agencies is of grave concern. Leaving detained persons with serious bodily injuries without any appropriate medical care for hours on end could, in the Committee's view, be considered as amounting to inhuman and degrading treatment. The CPT calls upon the Ukrainian authorities to ensure that the legal obligation to provide, without delay, medical assistance to any person detained by a law enforcement agency, who is in need of it, is always complied with in practice.

During the visit, the delegation came across what could be considered a case of gross forgery of official custody registers in Dnipropetrovsk. The CPT recommends that a thorough inquiry be carried out into this matter.

Follow-up

The Ukrainian authorities are requested to provide, within three months, a full response containing an account of action taken by them to implement the Committee's recommendations and setting out their reactions and replies to its comments and requests for information.

They are also requested to provide, within one month, information on i) any action envisaged/taken by the relevant authorities to set up a specialised investigation "task force" as referred to above ; ii) any specific investigations conducted into cases referred to in the report and iii) progress made into the investigations into other cases of ill-treatment by or with the authorisation, support or acquiescence of public officials during the "*Maidan*" demonstrations in Kyiv and Dnipropetrovsk.

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Ukraine from 18 to 24 February 2014. The visit was one which appeared to the Committee “to be required in the circumstances” (see Article 7, paragraph 1, of the Convention).¹

2. The visit was carried out by the following members of the CPT:

- Lətif HÜSEYNOV, President of the Committee (Head of delegation)
- Marzena KSEL, 1st Vice-President of the CPT
- Djordje ALEMPIJEVIĆ
- Davor STRINOVIĆ
- George TUGUSHI.

They were supported by Borys WÓDZ, Head of Division, and Johan FRIESTEDT from the Committee’s Secretariat, and assisted by:

- Denys DANYLENKO (interpreter)
- Vadim KASTELLI (interpreter)
- Larysa SYCH (interpreter).

B. Context of the visit and establishments visited

3. One month after the CPT’s periodic visit to Ukraine in 2013, mass demonstrations began on Kyiv’s Independence Square² on 21 November 2013 in reaction to the Government’s suspension of the preparations for the signature of an Association Agreement between Ukraine and the European Union. Independence Square quickly became the core of a movement later known as “*Euromaidan*” or “*Maidan*”.

¹ All reports on the CPT’s previous visits to Ukraine and the related Government responses have been made public and are available on the CPT’s website: www.cpt.coe.int. The report on the previous visit in 2013 was made public on 29 April 2014 (document [CPT/Inf \(2014\) 15](#)). A full Government response on action taken to implement the Committee’s recommendations is expected to be provided by 30 September 2014.

² *Maidan Nezalezhnosti* (*Майдан Незалежності*) in Ukrainian.

After having received reports of ill-treatment of persons apprehended by Internal Affairs special forces, in particular in the course of major police interventions on 30 November 2013 on Independence Square and on 1 December 2013 on Bankova Street in Kyiv, the CPT intensified its confidential dialogue with the Ukrainian authorities and returned to Ukraine to hold high-level talks. These talks, which took place on 13 and 19 December 2013 in Kyiv, aimed in particular at discussing investigative steps taken in respect of cases involving allegations of police ill-treatment during the above-mentioned interventions and action taken to prevent any such instances in future.³

4. Regrettably, a new threshold of violence was crossed following subsequent waves of protests against the adoption of so-called “anti-protest laws” on 16 January 2014. There were numerous reports of ill-treatment of “*Maidan*” protesters by members of Internal Affairs special forces, and unidentified individuals assisting them, in the course of the public order operations of 19-23 January 2014 on Hrushevskoho Street in Kyiv and of 26-27 January 2014 in front of the Regional Administration building in Dnipropetrovsk as well as during similar interventions in other cities. Some of these reports of ill-treatment were supported by video footage and generated public outcry. The then Prime Minister resigned days after the carrying out of these operations.

There were also growing concerns about instances referred to as possible enforced disappearances. Reference can be made to the case of Dmytro Bulatov who was apparently abducted in January 2014 and physically ill-treated by unidentified individuals believed to work for the interests of public officials or to be public officials themselves. In some cases, missing persons were found dead with their bodies displaying signs of a violent death.

5. By letter of 29 January 2014, the CPT’s Bureau invoked Rule 28 (1) of its Rules of Procedure⁴ and requested the Ukrainian authorities to provide a full list of persons who were deprived of their liberty in the context of the above operations, a full list of the persons who were still being detained in relation to these events, information on the state of health of each of the persons concerned, including any injuries which they may have sustained during apprehension and/or subsequent detention, and information on any investigations initiated in respect of the alleged ill-treatment by law enforcement officials in that particular context. On 31 January 2014, the CPT’s Bureau was provided *inter alia* with lists of 39 persons who had been remanded in custody and were being held at Kyiv SIZO in relation to the events on Hrushevskoho Street and of 21 other detained persons who were being cared for at the Kyiv Municipal Clinical Emergency Hospital. Six more persons had been released from custody between 27 and 30 January 2014. Injuries had been detected on a total of 42 detained persons upon their admission to the Kyiv ITT, SIZO or Municipal Clinical Emergency Hospital.

In parallel, the Council of Europe’s Commissioner for Human Rights, Nils Muižnieks, decided to carry out a special mission to Ukraine, and more specifically to Kyiv, Vinnytsia, Dnipropetrovsk and Zaporizhzhya, from 4 to 10 February 2014. The Commissioner and his team, which included a forensic doctor and former member of the CPT, Marija Definis-Gojanović, paid particular attention to information indicative of breaches of the right to life and the prohibition of torture and other forms of ill-treatment as well as reports of abductions/missing persons.⁵

³ See, in this respect, the CPT’s [news flash](#) of 20 December 2013.

⁴ Rule 28 (1) of the Committee’s Rules of Procedure reads as follows: “Before deciding on a particular visit, the Committee or, if appropriate, the Bureau may request information or explanations as regards the general situation in the State concerned, as regards a given place, or as regards an isolated case concerning which it has received reports”.

⁵ The Commissioner’s visit report was made public on 4 March 2014 (see document [CommDH \(2014\) 7](#)).

6. Shortly after the Commissioner's mission, the CPT notified the Ukrainian authorities of its intention to carry out an *ad hoc* visit to Ukraine. On 14 February, the Ukrainian authorities informed the Committee that all "*Maidan*" demonstrators who were still remanded in custody in Kyiv and other cities had been either released or placed under house arrest. This development was short-lived as the beginning of the visit coincided with the eruption of a new round of violent clashes and the conduct of public order operations around Independence Square, which ended with a considerable number of deaths, mostly as a result of gunshot injuries. The victims were in the main "*Maidan*" protesters but a number of law enforcement officials were also killed in the course of those operations. In April 2014, the CPT was informed that the Prosecution Service was conducting criminal investigations into the murders of 76 persons and the attempted murders of 81 persons during "*Maidan*" demonstrations in the capital city; these investigations concerned not only the period from 18 to 22 February 2014 but also the operations of 19 to 23 January and their aftermath.

It should be recalled that the events that occurred between 18 and 21 February 2014 had major political consequences, notably the emergence of a political vacuum at the highest level and a change of power during the last days of the CPT's visit. Reference should be made here to Resolution 1988 (2014) of the Parliamentary Assembly of the Council of Europe (PACE) on "Recent developments in Ukraine: threats to the functioning of democratic institutions".⁶

7. Consequently, during the visit, the CPT's delegation examined the manner in which "*Maidan*" protesters apprehended by law enforcement officials and/or unidentified individuals assisting them had been/were treated during the public order operations of 19 to 23 January and of 18-21 February 2014 in Kyiv. In the Dnipropetrovsk Region, the delegation spoke to a number of persons apprehended during the public order operations conducted on 26 and 27 January 2014.

Some persons who had been detained in December 2013 and January 2014 by law enforcement officials or individuals possibly assisting them in relation to the events in Kyiv were also interviewed in the context of that visit.⁷

⁶ The events in question were also witnessed by PACE Rapporteurs who were in Kyiv from 17 to 21 February 2014 in the context of a fact-finding mission. For more details, see Resolution [1988 \(2014\)](#), adopted by PACE on 9 April 2014. See also the report ([document 13482](#)) of the PACE Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee).

⁷ In addition, the delegation's sub-group operating in the Dnipropetrovsk Region carried out a targeted follow-up visit to Prison No. 3 in Kriviy Rih in order to examine whether prisoners held in this establishment had been treated correctly and had remained free from intimidation or retaliation by prison staff or inmates assisting them following the CPT's visit in October 2013. The findings in relation to that part of the visit are reflected in the report on the 2013 periodic visit (see document [CPT/Inf \(2014\) 15](#)).

The delegation carried out private interviews with persons deprived of their liberty and/or consulted the relevant documentation in the following places:

Internal Affairs establishments

Kyiv

Darnits'ke District Internal Affairs Directorate
Desnyans'ke District Internal Affairs Directorate
Obolons'ke District Internal Affairs Directorate
Shevchenskivs'ke District Internal Affairs Directorate
Pechers'ke District Internal Affairs Directorate
Kyiv Temporary Detention Isolator (ITT)

Dnipropetrovsk Region

Babushkins'kyi District Internal Affairs Division, Dnipropetrovsk
Dnipropetrovsk ITT

Penitentiary establishments

Kyiv pre-trial establishment (SIZO)
Dnipropetrovsk SIZO
Krivyi Rih Closed-Type Prison No. 3*.

The delegation also had an opportunity to go to the site where the so-called “anti-Maidan” protest camp⁸ was located and where a number of persons were allegedly being held by unidentified private individuals or public officials before being handed over to members of Internal Affairs special forces.

In the course of the visit, the delegation also went to several hospitals to talk to medical staff, interview patients and consult relevant documentation. More specifically, it went to the Kyiv Municipal Clinical Emergency Hospital (including its secure ward), the Kyiv Municipal Clinical Hospital No. 17, the Main Military Clinical Hospital in Kyiv and the neuro-surgical ward of the Mechnikov Regional Clinical Hospital in Dnipropetrovsk.

The delegation also spoke to the management and doctors of the forensic medical bureaus in Kyiv and Dnipropetrovsk.

* See footnote n° 7 as regards the follow-up visit to this particular establishment.

⁸ This camp was also referred to as the “Headquarters of the Party of Regions” due to the alleged presence of election campaign material such as flags, banners and umbrellas bearing symbols of the political party in power at the time.

C. Consultations held by the delegation, co-operation encountered and post-visit dialogue

8. In the course of the visit, the CPT's delegation had consultations with Maksym RAYKO, Deputy Minister of Justice, and other senior officials from relevant ministries/agencies.⁹ In both Kyiv and Dnipropetrovsk, the delegation had meetings with representatives of the Office of the Parliamentary Commissioner for Human Rights/National Preventive Mechanism (NPM), members of several non-governmental organisations and lawyers.

A list of the authorities and organisations met by the delegation is appended to this report.

9. Despite the challenging situation prevailing in the country, the delegation benefited from excellent co-operation from the Ukrainian authorities. The delegation had unlimited access to places of deprivation of liberty, was able to speak in private to detained persons and could communicate freely with any person whom it believed could supply relevant information. Further, the delegation was provided with all the necessary documentation it required and additional requests for information made during the visit were promptly met.

10. As the delegation was not in a position to provide its preliminary observations to the Ukrainian authorities at the end of the visit, it first reported to the CPT during the Committee's plenary meeting which was held in Strasbourg from 3 to 7 March 2014. The plenary Committee decided to communicate the delegation's preliminary observations to the Ukrainian authorities and to engage in a dialogue with regard to the investigations into possible ill-treatment of persons held by law enforcement agencies in the context of the above events.

By letter of 21 March 2014, the President of the CPT transmitted the text of the delegation's preliminary observations. On that occasion, the Ukrainian authorities were asked for their remarks on several matters requiring clarification and pertaining to public officials and unidentified individuals involved in the public order operations at issue. Further, the Ukrainian authorities were requested to provide a detailed account of the investigations that had been conducted into cases involving allegations or other evidence of ill-treatment of persons held by law enforcement officials, or unidentified individuals who assisted them, in relation to "*Maidan*" demonstrations in Kyiv and other cities as from November 2013, and of the initial results of such investigations.

By response of 10 April 2014, the Ukrainian authorities forwarded information on the initial results of criminal investigations and a further update was provided on 30 April 2014. This information is examined in the present report.

⁹ In the course of the visit, the delegation came to the conclusion that meetings with the then Prosecutor General and the then Acting Minister of Internal Affairs, which were requested to take place on 24 February 2014, would not have been of assistance in the circumstances and decided to hold a technical meeting with Mr Rayko instead before leaving the country (see also paragraph 6).

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Treatment of persons apprehended by or with the authorisation, support or acquiescence of law enforcement officials

1. Persons apprehended during the public order operations of 19-23 January and of 18-21 February 2014 in Kyiv

11. In Kyiv, the CPT's delegation received numerous allegations and gathered other evidence of a widespread pattern of ill-treatment of "*Maidan*" protesters by members of Internal Affairs special forces or by groups of unidentified individuals in civilian clothes closely co-operating with them at the time of actual apprehension and/or shortly afterwards in the course of the public order operations of 19-23 January and 18-21 February 2014.

More specifically, in many such cases, the persons with whom the delegation spoke alleged that they had been the subject of particularly excessive use of force during apprehension (e.g. extensive beatings involving the use of batons or other hard objects until they were unable to move by their own means or until they lost consciousness). In a number of instances, during the period immediately following apprehension, reference was made to being lifted and thrown to the ground, being dragged by the feet down the stairs, repeated kicks and punches, receiving large amounts of tear gas, blows with batons, gun butts or bullet-proof jackets, strangulation, stabbing and shooting with rubber bullets at close range. This violence was allegedly deployed even though the apprehended persons were apparently not offering any type of resistance and complied with orders given by law enforcement officials, had allegedly been brought under control, and/or were in a poor state of health. Some persons interviewed also claimed that, once apprehended, they had been hit with batons whilst being forced to run through a "corridor" formed by members of Internal Affairs special forces or had been initially asked by law enforcement officials to choose with which "special means" they would like to be "dealt with" (e.g. being shot at with a rubber bullet gun or receiving baton blows). The aim of the various types of alleged ill-treatment was apparently to inflict the maximum possible pain or damage to the health of the apprehended persons.

The law enforcement officials who were the subject of allegations of ill-treatment were almost exclusively members of the now disbanded "*Berkut*" special police unit (PMOP "*Berkut*") and officials of the Interior Troops;¹⁰ most of them were said to wear balaclavas and none had individual identification numbers on their uniforms/helmets which could make them clearly identifiable during subsequent investigations. Several detained persons interviewed claimed that they saw commanding officers (wearing a visible indication of their ranks) during their alleged beating by subordinates. These officers apparently encouraged their ill-treatment or did nothing to stop it. Groups of individuals allegedly supporting members of the "*Berkut*" special police unit and the Interior Troops were most often referred to as "*Titushky*" or anti-*Maidan* activists.¹¹

¹⁰ Both forces were subordinated to the Ministry of Internal Affairs at the time of the visit and were composed of units reportedly coming from various parts of the country. The "*Berkut*" special police unit was disbanded by Order No. 144 of the Acting Minister of Internal Affairs on 25 February 2014. Interior Troops (*Vnutrishni Viys'ka* in Ukrainian, abbreviated VV) supported other Internal Affairs agencies during the public order operations. Members of the "*Berkut*" unit and of the Interior Troops had distinct uniforms and insignia.

¹¹ So-called "*Titushky*" (or anti-*Maidan* activists) were generally believed to be unidentified private individuals (e.g. sports club members, private security officers or former law enforcement officials) specifically recruited to assist law enforcement officials (or to provoke incidents during "*Maidan*" demonstrations). They often allegedly had specific dress codes or wore distinct armbands to be identified by law enforcement officials during public order operations.

By contrast, no complaint was received from persons interviewed who had been apprehended by public officials later identified as belonging to the Security Service (SBU) “Alpha” special unit.¹²

12. By way of illustration, reference can be made to the following cases. “A” was apparently apprehended by members of the PMOP “*Berkut*” on the evening of 20 January 2014. He allegedly complied with orders to lie down on the ground when he was on the top of a colonnade on Hrushevskoho Street in Kyiv. He claimed that he had nevertheless received repeated and heavy baton blows from “*Berkut*” police officers, to the head in particular. He said that he had lost consciousness in the course of the beating. He was formally detained and admitted to Kyiv Clinical Emergency Hospital on 21 January 2014. Medical reports drawn up subsequently refer to injuries consistent with his allegations: “brain concussion”, “multiple head and facial injuries”, “fracture of the bone on the right side of the nose”. Further, after the incident, video footage was released showing members of the “*Berkut*” special police unit inflicting severe baton blows on apprehended persons, apparently lying on the top of the colonnade; the footage was apparently recorded on 20 January 2014 at night.

“B” also alleged that he had been apprehended and beaten on Hrushevskoho Street on 20 January 2014. After having been dragged near Mariinskyi Park, he was allegedly forced to run through a corridor of “*Berkut*” police officers (with about ten law enforcement officials on each side) who were said to have inflicted numerous baton blows. Whilst being further beaten, his upper clothes were reportedly forcibly replaced with clothes that had been soaked in gasoline, which appeared to be later registered as evidence. He also claimed that he had received cuts with a knife during the beating. He was found during subsequent medical examinations with injuries consistent with his account: closed cranial trauma, broken right arm, broken fingers and a cut wound to the buttocks.

“C” claimed that he had been apprehended in the early hours of 23 January 2014. Although he had allegedly offered no resistance, he said that he had been kicked and beaten with batons by “*Berkut*” police officers for about 15 minutes after having been dragged to a police vehicle. He was taken to Kyiv Clinical Emergency Hospital on the same day and was treated there until 2 February 2014. Medical reports referred to injuries consistent with his allegations: “repeated cranial trauma”, “brain concussion”, “injury on the left side of the head”, “left eye hematoma”, “hematoma on the left shoulder, 8 x 8 cm”, “hematoma on the left side of the back, 7 x 5 cm”, “hematoma on the left arm, 25 x 10 cm” and “on the left forearm, 25 x 10 cm”, “excoriations and hematoma on the chest”, “excoriation on the left side of the nose and face”.

“D” was also apprehended on 23 January 2014. He was in a van when “*Berkut*” police officers took all the occupants of the vehicle out and ordered them to lie down on the ground. He claimed that, after they had all complied with the orders, they had received repeated kicks and baton blows, including to the head. Despite his injuries, he had been made to stay on his knees, head down, for almost an hour. He was taken to hospital on 24 January 2014. Hospital reports referred to injuries consistent with his account: “cranial trauma”, “brain concussion”, “multiple injuries on the head, chest and extremities”.

¹² However, the delegation heard several credible accounts of disputable crowd-control methods used by “Alpha” teams stationed on building tops to disperse “*Maidan*” demonstrators when new clashes began on 18 February 2014 in Kyiv. These allegations will not be addressed in the report.

Unidentified individuals referred to as “*Titushky*”, “*Berkut*” police officers and members of the Interior Troops were allegedly involved in the apprehension of “E” on Hrushevskoho Street on 18 February 2014. “E” claimed that he received punches, kicks and baton blows, including to the head and shoulders, after he had lain on the ground following apprehension. Medical reports consulted by the delegation referred to a “periorbital hematoma on the left eye”, “excoriations” “on the nose”, “the left side of the forehead”, “the left temporal region of the head and shoulder” and a “fracture of the first finger on the right hand”. These injuries were still visible upon examination by one of the delegation’s forensic doctors a few days later and were consistent with his allegations.

13. In some instances, in particular during the operations of 19-23 January 2014, the alleged beatings were followed or combined with humiliation by members of the PMOP “*Berkut*”/Interior Troops (e.g. apprehended persons being stripped naked in cold weather and photographed; having their hair cut; toothpaste, shoe cream or other products being spread on their faces; having their trousers cut and being mocked; being made to kneel and sing to the glory of “*Berkut*” special police).

The case of *Mikhailo Havrilyuk* is emblematic. Mr Havrilyuk told the delegation that groups of individuals in civilian clothes (referred to as “*Titushky*”), members of the “*Berkut*” special police unit and then Interior Troops had been involved in his apprehension and beating (e.g. punches, kicks, blows with batons and butts of weapons) on 22 January 2014, while being dragged or lying on the ground trying to protect his head. Law enforcement officials apparently mocked him during the alleged beatings and some of them took photographs or filmed him with their mobile phones. He said that he had been stripped naked, except for his shoes, and forced to stand still in freezing temperatures and made to pose for pictures before being taken to a police vehicle. Video footage of the last sequence of the alleged ill-treatment had been released on the Internet following the incident and had provoked widespread revulsion. The then Minister of Internal Affairs apologised shortly after for the “unacceptable actions of persons in police uniform”.

In a letter of 31 January 2014, the Ukrainian authorities indicated that the Investigation Department of Kyiv’s Prosecution Service had initiated a criminal investigation into “excess of authority or official duties” with the use of violence, weapons, or acts causing pain or infringing human dignity (Section 365 (2) of the Criminal Code). By letter of 30 April 2014, the CPT was informed that two Internal Affairs officials had been charged.

14. During the visit, the delegation also heard several accounts of physical ill-treatment of apprehended protesters during initial questioning by members of the “*Berkut*” special police unit/Interior Troops or by unidentified individuals in civilian clothes co-operating with them and believed to be law enforcement or other public officials. In virtually every such case, the aim of the questioning was apparently to obtain information about the organisation and the alleged funding of the “*Maidan*” protests.

The alleged ill-treatment during questioning by members of “*Berkut*” police forces or Interior Troops included punches, kicks and baton blows and was said to have happened in secluded areas, within the buildings where the apprehension took place or in a yard.

15. It is of concern that several detained persons with whom the delegation spoke firmly believed that a few members of the “*Berkut*” special police unit/Interior Troops who had apprehended, questioned and allegedly ill-treated them were, in reality, law enforcement officials from a foreign country, namely the Russian Federation. Indeed, some claimed that those officials had had distinct accents when speaking Russian. They also considered that the way in which they had been addressed and the nature of certain questions asked suggested that they were in fact Russian public officials. Further, other persons interviewed indicated that certain members of the “*Berkut*” special police unit whom they had captured during initial clashes had Russian identification documents on them and one surprisingly wore a Russian police jacket and insignia beneath his Ukrainian uniform.

Reference should be made to the case of “F”. “F” had allegedly been beaten when he was apprehended by “*Berkut*” police officers and members of the Interior Troops on 18 February 2014, in a building where he was hiding together with several other “*Maidan*” protesters. He claimed that, following actual apprehension and initial beatings, he had been dragged by his feet down the stairs. “F” said that he and other apprehended persons had then been taken to a yard and surrounded by law enforcement officials who had questioned them. He and others were reportedly beaten again during the questioning.¹³ “F” was fully convinced that some of those who had allegedly questioned and beaten him were Russian officials “in disguise”, as he put it. Not only did they have, according to him, a distinct Russian accent but one of them also told him after having hit him: “if you were in my country, you would be killed at once”.

16. As regards alleged ill-treatment during questioning by unidentified individuals in civilian clothes during the operations of 18-21 February 2014, it apparently involved kicks, blows with hard objects and the use of electroshock devices (with different voltage levels). The persons concerned had their hands tied with plastic straps behind their back and were held in tents, on the site where the so-called “anti-*Maidan*” protest camp was located, shortly before handover to “*Berkut*” police officers or other uniformed law enforcement officials who apparently had stayed outside the tents. When visiting the site in question on the morning of 22 February 2014, the delegation found several plastic straps fully matching the descriptions given by the detained persons interviewed.

It clearly emerged from the delegation’s findings that the unidentified individuals in question worked with the authorisation, support or acquiescence of law enforcement officials. At the same time, in several instances, the persons concerned were thought to be Internal Affairs or other public officials (including members of the “*Berkut*” special police unit) who did not identify themselves during questioning or thereafter. For instance, when interviewed by the delegation, “G” had little doubt that the civilians who allegedly questioned him and applied electroshocks to him were law enforcement officials, notably on the basis of their attitude and the methodical way in which they worked.

¹³ According to medical reports seen by the delegation, “F” displayed the following injuries: “two hematomas, blue-red in colour, 0.5 x 1 cm in size, on the scapula”; a “5-cm-long injury on the right ear”; a “small excoriation, 0.5 x 2 cm in size, on the forehead”; “swelling, 0.5 cm in diameter, on the hairy part of the head, in the occipital region”; “hematoma, 3 cm in diameter, red in colour, on the nasal root”; “three scratches, 3 cm in length, on the right hand”; “swelling, 7 x 8 cm in size, on the lower part of the leg”. X-ray showed that he also had a fracture of the second finger of the left hand.

17. It should also be mentioned that the delegation heard a few allegations of physical ill-treatment (e.g. beatings, pushing back of the eyeballs, etc.) of persons apprehended by members of “*Berkut*” police officers/Interior Troops or by unidentified individuals in civilian clothes (some reportedly being former law enforcement officials) during transfers in unmarked/private vehicles to Internal Affairs directorates.

At the same time, it should be placed on record that hardly any allegations of ill-treatment were received as regards police convoy officers. On the contrary, many persons interviewed made positive comments about them.

18. Most detained persons interviewed said that they had been treated correctly during interviews by investigators and other staff working in Kyiv Internal Affairs district directorates/divisions. That said, the delegation heard rare accounts of threats (e.g. death threats or threats of insertion of a baton into the detained person’s anus) by investigators during questioning prior to the arrival of a lawyer, in order to make them sign self-incriminating statements or other documents.

19. As regards staff working in the ITT in Kyiv, as had been the case during the visit in 2013, the delegation did not receive any complaints of ill-treatment.

2. Persons apprehended during the public order operations of 26-27 January 2014 in Dnipropetrovsk

20. At Dnipropetrovsk, the CPT’s delegation heard a number of accounts and/or found other evidence of beatings of protesters at the time of apprehension by groups of unidentified individuals acting in close co-ordination with law enforcement officials (generally using wooden clubs, sticks or batons) and/or immediately after apprehension by members of law enforcement agencies (mainly in the form of kicks and baton blows), although the apprehended protesters allegedly offered little or no resistance. The purpose of the alleged ill-treatment was apparently to inflict severe injuries on protesters, in particular to their heads. Almost all the apprehended persons (26 in total) sustained injuries, some of them serious.

For instance, “H” reportedly received baton blows after law enforcement officials made him lie prone onto the ground. He said that he had also allegedly been dragged by his clothes. Upon examination by a medical expert from the Dnipropetrovsk Forensic Medical Bureau whilst in police custody, he was found to display a bruise on his head and multiple bruises on his extremities and other parts of the body (cf. forensic report No. 347e). “H” was subsequently taken to City Hospital No. 16, where the doctor at the emergency ward (“*travmpunkt*”) recorded at 8.25 p.m. on 26 January 2014: “bruises on the right hip and left knee joint”. Another doctor, from the admission ward of the same hospital, examined “H” once again and noted at 9.43 p.m. on the same day: “bruises and abrasions of the soft tissues of the head”. At Dnipropetrovsk SIZO, medical records referred to the following injuries observed on admission and consistent with his account: “extensive hematoma of the right hip, 15 x 25 cm; on the right chin 5 x 8 cm; under left knee area hematoma 8 x 10 cm; bruises of the frontal area of the head to the left, 1.5 cm; injury of the left wrist”.

21. In a few instances, the persons concerned were allegedly beaten again by apprehending officials in police vehicles on the way to Internal Affairs establishments.

22. On a positive note, the delegation did not receive any complaints of ill-treatment by law enforcement officials working in Internal Affairs district divisions.

23. The public officials who were the subject of the allegations of ill-treatment were members of Internal Affairs structures, both uniformed, with full riot gear for some of them, and plain-clothed. As regards unidentified private individuals (referred to as “*Titushky*”), they were seen to be armed with wooden clubs and other blunt objects. They reportedly provoked initial clashes and formed part of the subsequent public order operations. They were said to have followed instructions issued by Internal Affairs officials and moved in an organised manner.¹⁴

3. Assessment

24. The delegation’s findings during the visit in February 2014 suggest that the deliberate ill-treatment of “*Maidan*” protesters by or with the authorisation, support or acquiescence of members of the “*Berkut*” special police unit/Interior Troops and other uniformed law enforcement officials during and after apprehension was an accepted means of enforcing law and order in the context of the public order operations at issue. In several instances, the alleged ill-treatment was of such a severity that it could be considered as amounting to torture.

By contrast, the risk of ill-treatment was relatively low once the apprehended persons concerned were handed over to police convoy officers, investigators and custodial staff (see, however, paragraph 54 as regards long delays in providing adequate medical care).

25. The allegations referred to in paragraphs 11 to 23 were detailed, plausible and consistent. Moreover, many of them were supported by medical and/or other evidence, in the form of video footage, statements by potential witnesses, opinions shared by hospital doctors,¹⁵ lesions directly observed by the delegation’s medical members, entries in the medical documentation examined in the police and penitentiary establishments visited and forensic medical reports (some of which had been drawn up upon urgent requests by police investigators¹⁶). To sum up, the allegations had a high degree of credibility.

¹⁴ According to several of the delegation’s interlocutors, the regional leadership of the Ministry of Internal Affairs stated that the “*Titushky*” were volunteer members of civic organisations assisting the Internal Affairs agencies in restoring law and order.

¹⁵ For instance, hospital doctors interviewed by the delegation during the visit in Dnipropetrovsk expressed their view that some of the injuries observed were unlikely to have been sustained in the course of a fight but were rather the result of assaults, as was claimed by the patients.

¹⁶ For instance, following requests made by the competent investigators, 21 out of 22 persons who had been later remanded in custody in the context of the public order operations of 26-27 January 2014 in Dnipropetrovsk had been examined by a forensic expert. Fourteen of them were found to display injuries. The quality of the forensic medical reports seen by the delegation could be described as fair, although they did not contain any conclusion as to the consistency between the injury/ies observed and the explanations given by the detained persons.

In their letter of 30 April 2014, the Ukrainian authorities informed the Committee that criminal investigations were being pursued as regards abuses allegedly committed by members of the PMOP “*Berkut*” and of the Interior Troops as well as individuals belonging to the so-called “anti-*Maidan*” group during the protests.

26. Despite consistent allegations on the presence of law enforcement officials from the Russian Federation within Ukrainian special forces operating in central Kyiv, the information gathered during the visit was not sufficiently precise and plausible to allow the delegation to fully assess their degree of credibility. When communicating the delegation’s preliminary observations on 21 March 2014, the CPT initiated a dialogue with the Ukrainian authorities on the matter. In their letter of 10 April 2014, the Ukrainian authorities indicated that, at this stage of the investigation, no evidence had been found on the presence of law enforcement officials from neighbouring countries, such as the Russian Federation, within the Ukrainian special forces that were deployed in the central part of Kyiv.

At the same time, the accounts heard from “*Maidan*” protesters about their deprivation of liberty and questioning by some individuals, in civilian clothing, believed to be “undercover” law enforcement or other public officials among “anti-*Maidan*” activists in Kyiv’s Mariinskyi Park were both consistent and plausible. Nevertheless, the delegation was not in a position to gather sufficient details which would support the strong conviction of its interlocutors on the subject. In response to the CPT’s preliminary observations, the Ukrainian authorities indicated in their letter of 10 April 2014 that the presence of law enforcement or other public officials within the “anti-*Maidan*” protest camp could not be established at this stage of the investigation. In the CPT’s view, this matter should be further investigated.

Allegations according to which “*Maidan*” protesters in Kyiv and Dnipropetrovsk were apprehended by or with the assistance of groups of unidentified private individuals with the authorisation, support or acquiescence of law enforcement officials leave little room for doubt. These were generally backed by public video footage and statements by public officials. However, the degree of involvement of such groups in the planning and/or operational conduct of the police interventions at issue remained totally unclear. In their letter of 10 April, the Ukrainian authorities indicated that evidence related to crimes (including murder) committed by individuals from the so-called “anti-*Maidan*” group had been found. At the same time, there was no proof that they provided support to the law enforcement officials in performing their duties. The Committee considers that this matter should continue to be examined very closely in the context of ongoing investigations.

The Committee would like to receive information on progress made in the conduct of these investigations and details on further investigative steps taken, being taken and, if possible, envisaged by the prosecuting authorities in relation to these matters.

4. The case of Dmytro Bulatov

27. During the preparation of the visit, *Dmytro Bulatov* was interviewed in private by two medical members of the CPT, Marika VÄLI, forensic doctor, and Vytautas RAŠKAUSKAS, psychiatrist, when he was being treated at Vilnius Republican University Hospital (Lithuania).

28. Mr Bulatov was one of the organisers of the “*Auto-Maidan*” movement, which supported the “*Maidan*” demonstrations, notably through car blockades. In the evening of 22 January 2014, he was allegedly assaulted from behind by unidentified individuals whilst at the intersection of Mayakovski Street and Vatutina Avenue in Kyiv, taken into a van and beaten whilst being driven for about one hour. He told the CPT’s representatives that he had subsequently been held in a dark room without windows, at an unidentified location, until 31 January 2014.

The alleged ill-treatment inflicted during his deprivation of liberty involved various methods which could be considered as amounting to torture: extensive beatings whilst handcuffed, having his hands and feet tied together behind his back or having his hands nailed to what was believed to be a wooden door; forced water ingestion; partial ear amputation; electroshocks. The purpose of the alleged ill-treatment was to obtain information on the funding of the “*Auto-Maidan*” movement and on its action. The graphic account provided by Mr Bulatov during his private interview with the CPT’s representatives was backed by medical documentation and could be considered as highly credible.

Whether a public authority was involved in one way or another in this case of deprivation of liberty remained an open question, even after the visit. At no point was Mr Bulatov allegedly able to see his captors and interrogators as he had a bag placed over his head or was made to wear goggles filled with cotton. At the same time, he remembered that they all allegedly spoke calmly and clearly, with a distinct Russian accent. They apparently always used “you” or “they” when referring to Ukrainian nationals. These indications and certain specific questions asked about earlier actions of the “*Auto-Maidan*” movement made him believe that his interrogators were Russian public officials or other Russian nationals working for the interests of Russian/Ukrainian public officials.

29. By letter of 10 April 2014, the Ukrainian authorities informed the CPT that investigations into torture and abduction/illegal deprivation of liberty, under Sections 127 (2) and 146 (2) of the Criminal Code, were under way. It had so far been established that, during the period ranging from 22 to 30 January 2014, severe pain and suffering had been inflicted to Mr Bulatov through beatings and other forms of ill-treatment with the aim of forcing him to act against his will. A number of investigative steps had been taken, in particular: interviewing of witnesses, reviewing (possible) crime scenes, fingerprinting and forensic soil investigation.¹⁷

The CPT would like to be kept informed of progress made in the investigation into this case, in particular as regards the identification of criminal suspects and their possible connection with a public authority.

¹⁷ The Ukrainian authorities also remarked that he had not been held in a police or penitentiary establishment during the whole duration of “*Maidan*” protests from November 2013 to February 2014 in Kyiv.

B. Action to combat torture and other forms of ill-treatment (including excessive use of force)

1. Government action to combat ill-treatment by law enforcement officials during public order operations

30. The manner in which public order operations were carried out by Internal Affairs special forces, in particular the PMOP “*Berkut*” and the Interior Troops, on Kyiv’s Independence Square on 30 November 2013 and on Bankova Street on 1 December 2013 did not help law enforcement officials to earn respect from the public. Instead, it fuelled the growing hostility towards them.¹⁸ The CPT noted that Government officials publicly apologised for police action on 30 November 2013 and that inquiries had been initiated by the relevant authorities. At the same time, there was a general feeling that much more should have been done to prevent a repetition of similar incidents. This prompted the Committee to send a delegation, led by its President, to hold talks with the Prosecutor General and the Minister of Internal Affairs in December 2013.

31. Regrettably, a month later, a “police versus protesters” mindset had further developed among law enforcement officials on the ground. This development had partly been encouraged by the Ukrainian authorities. Whilst making firm public declarations in respect of protesters who reportedly committed or would commit various offences during the protests, the highest representatives of the Prosecution Service and the Ministry of Internal Affairs said too little to ensure that all law enforcement officials understood that any forms of ill-treatment of protesters would be severely punished. Important legislative and other measures were yet to be taken to improve police accountability, including a legislative initiative to ensure the proper identification of individual law enforcement officials.¹⁹ At the same time, the hasty drafting and adoption of controversial “anti-protest laws” on 16 January 2014 were construed as sending the wrong message to Internal Affairs forces in charge of public order operations. In a statement made shortly after the adoption of these laws, the Council of Europe’s Commissioner for Human Rights expressed concern about provisions which “could exempt from criminal liability police officers who committed human rights violations during the [...] demonstrations” and stressed that impunity for these violations could “only encourage repetition of such crimes and deny justice for the victims”.²⁰

In this context, many of the delegation’s interlocutors considered that members of the “*Berkut*” special police unit and the Interior Troops had good reason later to believe that they could ill-treat “*Maidan*” protesters with impunity, in particular during the subsequent public order operations in January 2014. The Minister of Internal Affairs at the time had subsequently to adopt new instructions intended to prevent unacceptable police behaviour. However, the delegation’s findings showed that these instructions had little effect during the operations of 18-21 February 2014 in Kyiv. Certainly, members of the “*Berkut*” special police unit and Interior Troops appeared to be less minded to expose persons in their custody to various forms of public humiliation. However, they were apparently only more anxious *not to be seen* to ill-treat protesters as opposed to actually no longer inflicting ill-treatment.

¹⁸ Public video footage showed excessive force being used when dispersing protesters on 30 November 2013. Further, on other public videos, unidentifiable law enforcement officials could be seen hitting persons who clearly appeared to be in their custody without offering any resistance/in handcuffs during the operations of 1 December 2013.

¹⁹ See paragraph 51 of the report on the 2013 visit (document [CPT/Inf \(2014\) 15](#)).

²⁰ See [statement of 17 January 2014](#).

32. The CPT notes that several protesters interviewed during the visit in Kyiv indicated that, prior to apprehension, they saw persons whom they considered to be “undercover” plain-clothes law enforcement officials showing their identification cards while walking through police lines. When some of the delegation’s interlocutors enquired about the identification of these individuals, they failed to obtain an answer. In this connection, Internal Affairs staff met by the delegation confirmed that teams of plain-clothes officers were regularly working at the scene of the protests in order to observe and identify the protesters who were committing offences or to investigate criminal offences.

The CPT understands that the presence of plain-clothes law enforcement officials may be necessary to carry out certain policing tasks during public order operations. However, in the light of the delegation’s findings in Kyiv, the Committee can certainly not rule out that at least some individuals who allegedly apprehended, questioned and even ill-treated protesters were actually public officials who simply never identified themselves at the time of apprehension or during subsequent on-site questioning.²¹ Any such cases would clearly run counter to the basic principles of accountable policing.

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33. The CPT acknowledges the challenging nature of the situation faced by the Ukrainian law enforcement agencies during “*Maidan*” protests. After the brutal police interventions of 30 November 2013 on Independence Square, the risk of violent or destructive acts in Kyiv and other cities became more and more real. Nevertheless, the Committee must stress that a State’s response to any forms of violence can under no circumstances be allowed to degenerate into acts of torture or any other forms of ill-treatment (including excessive use of force).

It is crucial that the Ukrainian authorities take decisive action to prevent a repetition of the abuses observed during the “*Maidan*” protests. To that effect, an atmosphere must be created, in particular within special police units, Interior Troops and other forces involved in public order operations, in which resort to torture and other forms of ill-treatment (including excessive use of force) is clearly rejected by law enforcement officials themselves and in which the right thing to do is to report any such action by colleagues or other information indicative of ill-treatment. Further, the Ukrainian authorities must fundamentally review the legal provisions and regulations pertaining to the use of force and ensure the subsequent identification of law enforcement officials involved in public order operations. It is also essential to ensure that the relevant provisions and regulations on apprehension and questioning of suspects are strictly observed.

²¹ See, for more details, paragraphs 16 and 26.

34. The CPT trusts that the Ukrainian authorities will do their utmost to implement its recommendations made in paragraphs 48, 52, 54 and 59 of the report on the 2013 periodic visit and will pay due attention, in the context of future public order operations, to the impact of the decision-making on crowd dynamics. All law enforcement officials, in particular members of any special police units and Interior Troops, involved in public order operations must:

- i) clearly understand, notably through detailed regulations/instructions and suitable specialist, management and leadership training, that physical force should be used only when strictly necessary and only to the extent required to achieve a legitimate objective. Commanding law enforcement officers must seek to minimise the use of force when planning and conducting public order operations and must ensure that all their subordinates show restraint at all times;
- ii) receive a firm and regular message that they will be held accountable for having inflicted, instigated or tolerated any act of torture, excessive use of force or other form of ill-treatment (including death threats and threats of physical ill-treatment), irrespective of the circumstances. Every law enforcement official concerned should have a clear understanding that deliberate physical ill-treatment of protesters in their custody, whatever its severity, is a criminal offence.²² Whenever serious police misconduct is observed in the course of public order operations, consideration should be given to the adoption of a public declaration at the highest political level;
- iii) be reminded that they have a duty to refrain from carrying out orders which are clearly illegal and to report such orders or any information indicative of ill-treatment or other serious abuses, without fear of sanction. To this end, “whistle-blower” protective measures must be adopted. This implies the development of a clear reporting line to a distinct authority outside of the directorate or agency concerned as well as a framework for the legal protection of individuals who disclose information on ill-treatment and other malpractice.

35. The Ukrainian authorities must engage in a far-reaching police reform and take this opportunity to review the legal provisions on the use of force, in the light of the CPT’s findings during the visits in October 2013 and February 2014. The circumstances in which each type of force may be used must be clearly specified.²³ Further, it is particularly important that advance warning is given and recorded, where feasible, whenever the use of force may cause significant pain or result in serious injury. It is also essential that the reporting obligations do not amount simply to a formality but lead instead to close monitoring of the use of “special means” by the competent authorities. Once permission to use force is granted, the decision to strike is to be made by the individual law enforcement official and must be justified in each and every instance. When there is no less intrusive option available other than batons or other impact weapons to address a direct threat to life or limb, contact with the head, neck, throat, kidneys, collarbone, genitals and other sensitive areas should be avoided. Once apprehended persons have been brought under control, there can never be any justification for striking them. Anyone against whom a baton or other “special means” (e.g. rubber bullet guns) has been used must be seen promptly by a health-care professional and, where necessary, taken to hospital. Investigators should also ensure that any person coming under their responsibility is subjected to a (forensic) medical examination whenever there are grounds (e.g. visible injuries) to believe that ill-treatment may have occurred.

²² See, *inter alia*, Sections 117 and 365 of the Criminal Code.

²³ See, in this connection, Regulation No. 49 of 27 February 1991 on the application of “special means” for the protection of public order.

36. **Members of specialised forces and other uniformed police officers must always be identifiable, through the wearing of, not only a clearly distinctive insignia, but also a prominent identification number on the outside of their uniforms/on their helmet, which should always be visible (including when law enforcement officials wear full protective gear).²⁴ Any law enforcement officials deliberately neglecting to wear, removing or concealing their ranks or identification numbers should be the subject of appropriate sanctions.**

The wearing of balaclavas (in addition to protective helmets) by members of specialised forces may exceptionally be justified in the context of high-risk operations (for instance, when dangerous arrests are necessary). However, **the routine wearing of balaclavas during public order operations should be seriously reconsidered.** Further, **any pre-planned interventions should be video recorded (e.g. with tactical cameras as part of the equipment of the officers concerned).**

Action must also be taken to ensure that plain-clothes law enforcement officials effecting an apprehension and/or questioning an apprehended person in the context of public order operations clearly identify themselves (including by giving evidence of their status and professional identity as soon as is practicable).

37. **It must also be made clear to all law enforcement officials involved in public order operations that the apprehension and questioning of a person suspected of a criminal offence during protests should always be carried out in full compliance with the provisions of the Code of Criminal Procedure. In particular, apprehending officials should ensure that the apprehended individual is taken to an appropriate establishment and an apprehension report promptly drawn up. The questioning of the apprehended individual should take place in an adequate establishment or in any other place agreed upon by the official in charge of the questioning.²⁵**

38. **Further, the CPT trusts that the Ukrainian authorities will pursue their efforts to place more emphasis on a physical evidence-based approach in the investigation phase. At the same time, Internal Affairs officials, including members of special forces involved in public order operations, should be delivered the clear message that the fabrication of evidence is a criminal offence²⁶ and will be punished accordingly.**

²⁴ The wearing of a name tag for ordinary uniformed police officers could also be considered.

²⁵ See Sections 210 and 224 of the Code of Criminal Procedure.

²⁶ See, in particular, Section 366 of the Criminal Code.

2. Government action to combat ill-treatment by unidentified private individuals acting with the authorisation, support or acquiescence of public officials during public order operations

39. As previously indicated, it clearly emerged from the delegation's findings that, no matter how they were referred to ("Titushky", anti-Maidan activists, citizen volunteers, etc.), a large number of unidentified private individuals apprehended protesters with the authorisation, support or acquiescence of Internal Affairs officials or assisted law enforcement officials in the apprehension of protesters during the public order operations in Kyiv and Dnipropetrovsk in January and February 2014. They were also said to have been involved in a partial "outsourcing" of the ill-treatment of "Maidan" protesters during or shortly after apprehension and to have stopped the alleged beating whenever they were instructed to do so by uniformed law enforcement officials or before handover to Internal Affairs special forces.

40. Similar phenomena have been observed by the CPT on several occasions during visits to certain penitentiary establishments in Ukraine (e.g. delegation of authority from penitentiary staff to individual prisoners or groups of inmates; instances of alleged ill-treatment of prisoners by fellow inmates at the instigation of staff).²⁷ In the context of public order operations, any approach of this kind entails a heightened risk of ill-treatment of apprehended protesters and constitutes a serious threat to the very public order which law enforcement officials are meant to protect.

In the CPT's view, any involvement of citizen volunteers in law enforcement activities should be clearly circumscribed, surrounded by appropriate safeguards and should never prevent the law enforcement agencies from carrying out their tasks in a fair manner, guided, in particular, by the principles of impartiality and non-discrimination. The Committee concurs with the opinion of the Council of Europe's Commissioner for Human Rights that reliance upon the groups of unidentified private individuals/parties referred to during "Maidan" protests greatly undermined public confidence in law enforcement agencies as impartial institutions and could be highly dangerous in the context of the pronounced tensions in society.²⁸

41. The CPT recommends that the Ukrainian authorities review the legislation and regulations on policing, the citizen's participation in the protection of public order, citizen's arrest (i.e. lawful apprehension by anyone who is not a competent public official) and any other relevant provision or rule in order to ensure that no such provision or rule can be construed as allowing a delegation of police duties and powers, in particular as regards apprehension, detention and the use of force, to private individuals or entities during public order or other policing operations. It must also be made clear to all law enforcement officials that delegating their policing obligations and powers to private individuals will not absolve them of responsibility.

²⁷ See, for instance, paragraphs 108 and 112 of the report on the 2013 visit (document [CPT/Inf \(2014\) 15](#)).

²⁸ See, in this connection, paragraph 70 of the report of the Commissioner for Human Rights on his visit to Ukraine in February 2014 (document [CommDH \(2014\) 7](#)).

3. The role of health-care professionals in ITTs and SIZOs and of hospital and forensic doctors in the prevention of ill-treatment and in the documenting and reporting of injuries

42. In the report on its 2013 periodic visit, the CPT made detailed recommendations aimed at strengthening the role of health-care professionals in ITTs and SIZOs (and in medical institutions prior to admission to ITTs) in the prevention of ill-treatment, notably through proper medical screening and documentation of injuries.

Detained “*Maidan*” protesters met at Kyiv SIZO in February 2014 were allegedly physically examined by a health-care professional in the establishment’s medical unit shortly after admission, without the presence of any member of staff having no health-care duties. The injuries observed were recorded in a systematic manner and in far greater detail than in the past, generally with an indication of their location, shape, size and/or colour. The prisoners subjected to medical screening told the delegation that they had been asked about the origin of their injuries and the delegation noted that prisoners’ statements were recorded in the medical files. The CPT welcomes this development.

In contrast, the quality of the medical records seen by the delegation varied at the Dnipropetrovsk SIZO and was poor in the Kyiv ITT and the hospitals. Medical confidentiality was not observed, medical screening was often superficial and many injuries apparently went unrecorded.

43. The CPT recommends that the Ukrainian authorities build upon progress made at the Kyiv SIZO to implement the Committee’s recommendations contained in paragraphs 64 and 155 of the report on the 2013 periodic visit as regards medical examinations and the recording of injuries. In particular, action must be pursued to ensure that:

- **health-care professionals are as a rule not directly involved in the administrative procedure of handover of custody of detained persons to an ITT/SIZO;**
- **persons found to display injuries upon admission are not questioned by anyone about the origin of those injuries during the above-mentioned handover procedure;**
- **any record made, and any photographs taken, of injuries during the handover-of-custody procedures are forwarded without delay to ITT/SIZO health-care professionals;**
- **all persons admitted to ITTs and SIZOs are properly interviewed and thoroughly examined by qualified health-care staff as soon as possible, and no later than 24 hours after their admission; the same approach should be adopted each time a person returns to an ITT/SIZO after having been taken back to the custody of another structure for investigative or other purposes;**
- **all medical examinations in Internal Affairs establishments, hospitals and SIZOs are conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of staff not carrying out health-care duties;**

- **the record drawn up following the medical examination of a detained person in an ITT/SIZO contains: (i) an account of statements made by the person in question which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination (supported by a “body chart” for marking traumatic injuries); (iii) the health-care professional’s observations in the light of i) and ii), indicating the consistency between any statements made and the objective medical findings;**
- **detained persons and, upon their request, their lawyers are fully entitled to receive a copy of the medical records. When possible, photographs of injuries should be made and appended to the medical records.**

44. The reporting procedures in the establishments visited displayed the same shortcomings as during the 2013 visit. **The Committee refers to its comments and recommendations made in paragraphs 64, 157 and 158 of its report on that visit.**²⁹

45. The examination of several reports drawn up by forensic medical experts revealed that the descriptions of injuries were of a good quality.

The initiative of taking photographs of injuries, which is not a legal requirement under Ukrainian law, is to be welcomed and should be further encouraged. Nevertheless, the photographs attached to forensic reports were of a small size and of a relatively poor resolution, without a ruler included. Some photographs did not include anatomical landmarks and, in one case, photographs had not been made for all the injuries. **Steps should be taken to address this issue, in the light of these remarks.**

Another problem observed was the clear absence of confidentiality of forensic medical examinations performed in Internal Affairs directorates/divisions (as evidenced by the presence of uniformed Internal Affairs staff on photographs attached to two of the reports seen by the delegation). Further, the delegation was told that, under the current legislation, forensic medical reports are only sent to the body of inquiry (investigator, prosecutor or judge) which has ordered them. Forensic doctors are said to be prohibited from (they are criminally liable for) providing copies of such reports to the injured persons and/or their lawyers.

In this context, **the CPT recommends that steps be taken in order to:**

- **ensure that any forensic medical examination takes place under conditions ensuring confidentiality (and, in particular, without the presence of law enforcement officials);**
- **amend the relevant legislation so as to enable examined persons (and/or their lawyers) to obtain copies of the forensic medical report directly from the forensic medical expert.**

²⁹ See document [CPT/Inf \(2014\) 15](#).

4. The role of investigative judges/courts at the remand-in-custody stage in combating police ill-treatment

46. The report on the 2013 periodic visit highlights a major development with the adoption of Section 206 of the Code of Criminal Procedure which places upon judges a legal obligation to play a proactive role in combating ill-treatment and other serious human rights abuses by law enforcement officials. However, the situation in practice left much to be desired.³⁰

The delegation's findings during the visit in February 2014 do not bring any indication of progress in this area. On the contrary, the persons interviewed claimed that court hearings were particularly brief, investigative judges did not ask about their injuries, interrupted them when they started to complain about police ill-treatment or, in the few instances where judges did listen carefully, took no action and contented themselves with reading out decisions apparently prepared in advance. The CPT cannot but conclude that the lack of action by judges contributed to the emergence of a general feeling of impunity for any abuses committed by law enforcement officials during the "*Maidan*" demonstrations.

Judges must receive a clear message, through appropriate channels, that they will be held to account for not fulfilling their obligations under Section 206 of the Code of Criminal Procedure. In this connection, the CPT would like to receive statistics about the number and type of sanctions applied to judges for not fulfilling their obligations under Section 206 of the Code during the "*Maidan*" demonstrations in Kyiv and in Dnipropetrovsk, as well as in any other cities.

5. The development of the national preventive mechanism (NPM)

47. Shortly after the first incidents in November 2013, the Parliamentary Commissioner for Human Rights/NPM set up under the Optional Protocol to the United Nations Convention against Torture (OPCAT) engaged in a dialogue with the Government and prosecuting authorities, drew their attention to key European human rights principles and made appropriate recommendations. Members of the Office of the Parliamentary Commissioner and NPM teams worked with representatives of civil society and visited hospitals, Internal Affairs establishments and SIZOs on numerous occasions in order to examine the situation of protesters who had been detained or hospitalised throughout the duration of the protests.³¹ Nevertheless, several persons with whom the delegation spoke indicated that they had refrained from addressing to the Parliamentary Commissioner for Human Rights/NPM because they had had serious doubts about their capacity or willingness to act upon their complaints. In this connection, the representatives of the Office of the Parliamentary Commissioner/NPM met by the delegation pointed out that they had difficulties to mobilise the necessary resources to carry out their mandate effectively throughout the country and to meet all public expectations in the circumstances.

The CPT trusts that care will be taken to ensure that the Ukrainian NPM will meet, under any circumstances, the key requirements as laid down in the OPCAT and subsequently elaborated upon by the Subcommittee on the Prevention of Torture (SPT) in its Guidelines on national preventive mechanisms (independence, expertise and experience, resourcing issues, etc.).

³⁰ See paragraph 66 of the report on the 2013 visit (document [CPT/Inf \(2014\) 15](#)).

³¹ See, in particular, the Parliamentary Commissioner's "[Special Report](#) on the Infringements of Human Rights and Freedoms during the Events that took place in Ukraine between 21 November 2013 and 22 February 2014".

6. The role of prosecutors in combating impunity and the setting-up of a State Bureau of Investigation

48. As on previous visits, persons alleging ill-treatment during the visit in February 2014 generally had little confidence in the capability and determination of prosecutors to carry out effective investigations into their cases. Some of them were even considering taking the law into their own hands as a result.

In its preliminary observations, the CPT's delegation stressed that everything possible should be done to prevent any attempts to seek redress by violent means and that urgent steps were needed to overcome the widespread and long-standing perception of impunity vis-à-vis law enforcement officials who inflict, instigate or tolerate acts of torture or other forms of ill-treatment. It urged the Ukrainian authorities to take effective action in respect of complaints or any other evidence of ill-treatment by law enforcement officials or any other individuals who have assisted them in the carrying out of their duties in relation to the "*Maidan*" protests in Kyiv or other cities since November 2013. The Ukrainian authorities were requested to provide the CPT with a detailed account of the investigations that have been conducted into cases involving allegations or other evidence of ill-treatment, and of the initial results of such investigations.

In their letter of 30 April 2014, the Ukrainian authorities indicated in particular that, since 5 February 2014, a number of criminal investigations had been conducted under the supervision of the Prosecution Service's Main Investigation Department into possible excess of authority or official duties with the use of violence, weapons or other acts causing pain or infringing human dignity³² by members of the "*Berkut*" special police unit and Interior Troops when "*Maidan*" protesters were apprehended in Kyiv in January and February 2014. They also provided information on the results of investigations conducted by Kyiv's Prosecution Service (see, for instance, paragraph 13).

49. The general mistrust amongst potential victims/witnesses of ill-treatment in the system in place for investigating complaints against law enforcement and other public officials was already an issue shortly after the public order operations of 30 November and 1 December 2013 in Kyiv. In a letter of 9 December 2013, the CPT took note that the incidents during these operations would be investigated. This matter was the subject of a lengthy discussion a few days later during the meeting between CPT representatives and the then Prosecutor General on 13 December in Kyiv.

Further, the CPT has not been alone in underlining the need for investigations into possible police abuses to be – and to be seen to be – effective. In order to create public confidence in the investigations, the Secretary General of the Council of Europe, Thorbjørn Jagland, proposed that an International Advisory Panel (IAP) be established to oversee that the investigations into the violent incidents which took place from 30 November 2013 onwards met all the requirements of the European Convention on Human Rights and the case-law of the European Court of Human Rights. The members of the Panel³³ had a first meeting at the Council of Europe Headquarters in Strasbourg from 9 to 11 April 2014. At the end of the IAP's mission, a final report should be prepared by the Chair of the Panel and presented to the Secretary General and the Ukrainian authorities.

³² Section 365 (2) of the Criminal Code.

³³ Namely Sir Nicolas Bratza, Chairman, former President of the European Court of Human Rights, Mr Volodymyr Butkevych, former Judge of the European Court of Human Rights and Mr Oleg Anpilov, member of Kharkiv Regional Council.

The initiative was supported by the Ministers' Deputies and the Parliamentary Assembly of the Council of Europe.³⁴

50. The CPT considers that the numerous calls for effective investigations into the violent incidents during the “*Maidan*” protests and the close international supervision of these investigations provide a unique opportunity for the Ukrainian prosecuting authorities, in the light of the Committee’s recommendations made in the reports on the 2012 and 2013 visits and pending the establishment and the development of a fully operational State Bureau of Investigation (SBI), to set up a national specialised “task force” to carry out investigations into all cases involving alleged ill-treatment and other serious abuses by or with the authorisation, support or acquiescence of public officials during the “*Maidan*” protests and any similar events which occurred after February 2014.

The members of the “task force” should be carefully selected, deal exclusively with the aforementioned mandate and have a clear and unequivocal stance on the accountability of their role. They should have their own support staff for the operational conduct of the investigations in order to limit reliance on Internal Affairs and other law enforcement agencies as far as is practicable. Particular emphasis should be placed on the independence and impartiality of the members of the team. The effective protection of alleged victims and witnesses of ill-treatment whenever it is required by the circumstances should also be ensured, taking due account of the recommendations of the Committee of Ministers of the Council of Europe Rec (2005) 9 on the protection of witnesses and collaborators of justice and Rec (2006) 8 on assistance to crime victims;³⁵ it is also essential that the national specialised investigation “task force” takes due account of potential intimidation, reprisals and repeat victimisation by law enforcement officials when examining requests for protection.

The CPT is also of the view that an SBI dealing with abuses committed by public officials should be set up and developed as soon as possible and the possibility of integrating members of the above-mentioned “task force” into it examined at the earliest opportunity.

51. The CPT would like to receive, within one month, information on:

- any action envisaged/taken by the relevant authorities on the setting-up of a specialised investigation “task force” as referred to in paragraph 50 ;
- any specific investigations conducted into the cases referred to in paragraphs 12, 15, 16 and 20 ;
- progress made in the investigations into other cases (on the basis of official complaints or reports indicative of ill-treatment of apprehended persons in Kyiv and Dnipropetrovsk), including the case referred to in paragraph 13.

³⁴ See the [decisions](#) of the Council of Europe’s Ministers’ Deputies taken at their 1197th meeting of 16 April 2014, the information document presented by the Chair of the Council of Europe Ministers’ Deputies entitled “The situation in Ukraine (November 2013 – May 2014) – Overview of action by the Committee of Ministers” (document [CM/Inf\(2014\)14](#) of 2 May 2014) and paragraph 8 of PACE [Resolution 1974 \(2014\)](#) of 30 January 2014.

³⁵ See [Recommendation Rec \(2005\) 9](#) adopted by the Committee of Ministers on 20 April 2005 at the 924th meeting of the Ministers’ Deputies and [Recommendation Rec \(2006\) 8](#) adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers’ Deputies.

C. The practical operation of procedural safeguards against police ill-treatment

52. In both Kyiv and Dnipropetrovsk, the practical operation of procedural safeguards against ill-treatment – in particular the proper recording of detentions, the right of notification of custody and the right of access to a lawyer, including free legal aid – appeared to be somewhat better when compared with the CPT’s findings several months previously during the visit in October 2013.³⁶ However, the delegation found that the relevant provisions of the Code of Criminal Procedure had been routinely ignored by law enforcement officials with initial periods of actual deprivation of liberty of up to 12 hours, and in a few cases up to 24 hours, often unrecorded.³⁷ A number of detained persons interviewed indicated that they had been first questioned by an investigator without the presence of a lawyer and before being put in a position to have a relative or another third party informed of their situation. In many other instances, *ex officio* lawyers arrived at the very end of the interview, only to sign the protocols of detention.³⁸ Further, meetings with lawyers were often only possible in the presence of the investigator.

Reference is made to the recommendations set out in paragraphs 71, 72, 74-77, 79- 81 and 83 of the report on the 2013 visit, as regards the proper recording of custody, providing information on rights as from the very outset of deprivation of liberty, guaranteeing an effective right of notification of custody, and improving the practical operation of the right of access to a lawyer (including the need to immediately inform the relevant Free Legal Aid Centre of each fact of detention).

53. During the visit, the CPT’s delegation came across one case of alleged ill-treatment of a private lawyer providing assistance to “*Maidan*” supporters. “I”, who was interviewed whilst he was still in detention and under criminal proceedings, was allegedly beaten during and shortly after apprehension by Anti-Organised Crime (UBOZ) police officers and members of the “*Sokil*” special forces at the UBOZ Directorate in Kyiv.³⁹ “I” had reportedly come to that establishment to check whether his client was being held there and provide legal advice. In their letter of 10 April 2014, the Ukrainian authorities indicated that the Kyiv’s Prosecution Service was conducting an investigation into excess of authority or official duties with the use of violence, weapons, or acts causing pain or infringing human dignity (Section 365 (2) of the Criminal Code). **The CPT would like to receive information on progress made in the investigation into this case.**

³⁶ See paragraphs 67 to 90 of the report on the 2013 visit (document [CPT/Inf \(2014\) 15](#)).

³⁷ Generally, those formal safeguards (and information on them) were not granted to detained persons until they were brought before an investigator; however, in Dnipropetrovsk, a few allegations were heard that notification of custody and access to a lawyer had been delayed until the first court hearing (or even until a person’s arrival at the SIZO). This was also confirmed by lawyers from the Centre for Free Legal Aid.

³⁸ Such delays in access to a lawyer were mainly due to the fact that, despite recent (and positive) amendments to the Free Legal Aid Act (which allow the Centres for Free Legal Aid to act after having been informed by the apprehended person’s relatives, without waiting for an official notification by the law enforcement agency), such Centres frequently continued to be informed of cases of apprehension after delays of several hours (sometimes more than 12 hours). It is noteworthy that the Ukrainian Parliamentary Commissioner for Human Rights draws attention to this problem in the above-mentioned “[Special Report on the Infringements of Human Rights and Freedoms during the Events that took Place in Ukraine between 21 November 2013 and 22 February 2014](#)”. Access to a lawyer seemed to be somewhat better in Kyiv during the events of 18-21 February 2014, but this appeared to be more the result of the particular vigilance by lawyers supporting the “*Maidan*” protesters, who were present in/near all the Internal Affairs establishments visited by the delegation.

³⁹ “I” was released on 23 February 2014 and criminal charges against him were dropped.

54. Given the extraordinary circumstances that prevailed at the time of the visit, the failure to provide prompt access to a doctor for persons detained by law enforcement agencies is of particularly grave concern to the Committee. It became clear to the delegation that, before being thoroughly examined by a doctor and receiving appropriate medical care, severely injured persons were held for many hours following apprehension under conditions further endangering their health, in grossly overcrowded, unheated police vehicles and, for many of them, in the Internal Affairs district directorates/divisions to which they were subsequently allocated. A number of those persons were hardly in a position to be questioned by an investigator due to their state of health but had nevertheless been subjected to interrogation for some hours and had had to sign documents before emergency doctors were called in and/or before being taken to hospital. The delegation observed for itself during the evening of 18 February 2014 in Kyiv that transfers to hospitals from Internal Affairs directorates could take several hours.

Leaving detained persons with serious bodily injuries (e.g. open, bleeding wounds) without any appropriate medical care for hours on end – never mind holding them in overcrowded cells, corridors or offices and/or interviewing them – could, in the Committee’s view, be considered as amounting to inhuman and degrading treatment. **The CPT calls upon the Ukrainian authorities to take steps to ensure that the legal obligation to provide, without delay, medical assistance to any person detained by a law enforcement agency, who is in need of it, is always complied with in practice. Reference is also made to the recommendations made in paragraphs 86 and 87 of the report on the 2013 periodic visit.**

55. The part of the CPT’s delegation which visited Dnipropetrovsk came across what could be considered a case of flagrant forgery of official custody registers. In particular, when consulting the custody register at Dnipropetrovsk ITT, the delegation saw that the 22 persons detained in relation with the public order operations of 26-27 January 2014 had been registered as having stayed there between 11 p.m. on 26 January and 7-11 a.m. on 27 January 2014, before being transferred to the SIZO. Furthermore, entries not corresponding to the reality were made in the register of medical checks on arrival at the ITT (filled in by the feldsher or, in his absence, by the duty officer); it is particularly striking that all the 22 persons (in respect of whom there is ample data that at least several of them had sustained visible injuries) had been registered as having “no complaints” and no injuries.

The Head of the ITT acknowledged that none of the 22 persons (or at the very least, only one) had been brought to this establishment on 26 January 2014. He explained that, as according to the relevant regulations detained persons cannot be placed in a SIZO without having their administrative and medical files prepared in an ITT, he had been instructed by his superiors to prepare all the documentation as if the persons concerned had stayed in the establishment. This flagrant example of forgery is made even more striking by the fact that the fictitious detention in the ITT was also “confirmed” in the relevant documentation consulted by the delegation at the Babushkynskyi District Internal Affairs Division and in the SIZO in Dnipropetrovsk. Moreover, the forgery was reportedly not discovered in the course of subsequent prosecutors’ inspections to the three establishments.

The Committee recommends that a thorough inquiry be carried out into the above-mentioned case. The CPT would like to be informed, in due course, of the outcome of the inquiry, including any measures taken.

APPENDIX

**LIST OF THE AUTHORITIES AND ORGANISATIONS
WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS**

A. National and local authorities

Ministry of Justice

Maksym RAYKO Deputy Minister

Olga STEFANISHINA Head of the International Co-operation and European Integration Section, Directorate for International Law and Co-operation

State Penitentiary Service

Serhyi SYDORENKO First Deputy Head

Vladyslav KLYSHA Head of the International Co-operation Section

Ministry of Internal Affairs

Nataliya BORODYCH Head of Department, Public Relations Directorate

Yuryi ZANIK Head of Department, International Affairs Directorate

Ministry of Health

Mykola KHOBZEI Head of the Reform and Medical Assistance Development Directorate

Iryna IVANCHUK Head of the Legal Department

Vasyl BURCHYNSKYI Chief Specialist

Prosecution Service

Oleh KARPENKO Deputy Head of the General Directorate for the Supervision of the Observance of the Legislation in the Execution of Judicial Decisions in Criminal Matters and other Coercive Measures

Security Service of Ukraine

Ihor DEMCHENKO Head of Department

Kyiv City Administration

Alla ARESHKOVYCH Acting Head of the Health Protection Directorate

B. Parliamentary Commissioner for Human Rights / National Preventive Mechanism

Secretariat of the Parliamentary Commissioner for Human Rights

Bohdan KRYKLYVENKO Head of Secretariat

Department for the Development of the National Preventive Mechanism

Yuryi BELOUSOV Head of Department

Regional Representations

Anatolyi MELNIK Representative of the Parliamentary Commissioner for
Human Rights in the Dnipropetrovsk Region

C. Legal Aid Centres

Co-ordination Centre for Legal Aid – Kyiv

Co-ordination Centre for Legal Aid – Dnipropetrovsk

D. Non-Governmental Organisations

Amnesty International – Ukraine

Centre for Civil Liberties

Independent Human Rights Commission

Kharkiv Human Rights Group

Ukrainian Helsinki Human Rights Union