LIST OF ABBREVIATIONS

ATO the anti-terrorist operation in the territory

of Donetsk and Luhansk oblasts of Ukraine

CCU the Criminal Code of Ukraine

Convention Freedoms

the Convention for the Protection of Human Rights and Fundamental

Court the European Court of Human Rights

DPR Donetsk People's Republic

GUAM Organization for Democracy and Economic Development

Interior Ministry the Ministry of Internal Affairs of Ukraine

LPR Luhansk People's Republic

NATO the North Atlantic Treaty Organization

NSDC the National Security and Defense Council of Ukraine

POW a prisoner of war

Protocol II Protocol Additional to the Geneva Conventions and Relating

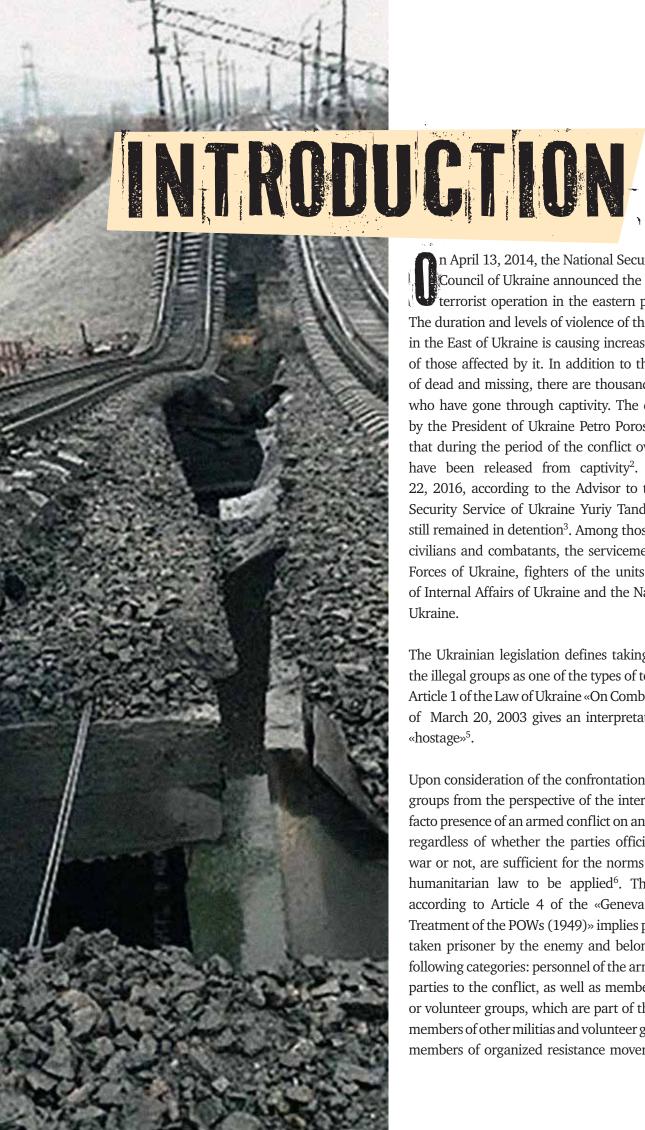
to the Protection of Victims of Non-International Armed Conflicts

(Protocol II) of June 8, 1977.

RF the Russian Federation

SSU the Security Service of Ukraine

UN the United Nations Organization



n April 13, 2014, the National Security and Defense Council of Ukraine announced the start of the antiterrorist operation in the eastern part of Ukraine¹. The duration and levels of violence of the armed conflict in the East of Ukraine is causing increase in the number of those affected by it. In addition to the large number of dead and missing, there are thousands of individuals who have gone through captivity. The data announced by the President of Ukraine Petro Poroshenko illustrate that during the period of the conflict over 2900 people have been released from captivity². As of January 22, 2016, according to the Advisor to the Head of the Security Service of Ukraine Yuriy Tandyt, 133 persons still remained in detention³. Among those there are both civilians and combatants, the servicemen of the Armed Forces of Ukraine, fighters of the units of the Ministry of Internal Affairs of Ukraine and the National Guard of Ukraine.

The Ukrainian legislation defines taking of hostages by the illegal groups as one of the types of terrorist activity⁴. Article 1 of the Law of Ukraine «On Combating Terrorism» of March 20, 2003 gives an interpretation of the term «hostage»5.

Upon consideration of the confrontation between armed groups from the perspective of the international law, de facto presence of an armed conflict on any given territory, regardless of whether the parties officially define it as war or not, are sufficient for the norms of international humanitarian law to be applied⁶. The term «POW» according to Article 4 of the «Geneva Convention on Treatment of the POWs (1949)» implies people who were taken prisoner by the enemy and belong to one of the following categories: personnel of the armed forces of the parties to the conflict, as well as members of the militia or volunteer groups, which are part of the armed forces; members of other militias and volunteer groups, including members of organized resistance movements belonging

to one of the parties to the conflict and operating on its own territory or abroad⁷. Article 44 of the Additional Protocol to the Geneva Conventions of September 12, 1949 Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of June 8, 1977 determines a POW any combatant who falls under the authority of the enemy power⁸.

The Additional Protocol to the Geneva Conventions of August 12, 1949 Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of June 8, 1977 introduces the concept of «a person whose liberty has been restricted» in respect of persons deprived of their liberty for reasons related to the armed conflict⁹.

The universality of international humanitarian law and its focus on the protection of individuals during an armed conflict (international or non-international) is defined in the following terms:

- » humane treatment;
- » personal integrity, including respect for the life, physical and mental integrity;
- » prohibition of torture, inhuman and degrading treatment;
- » recognition of the rights for everyone;
- » respect for honor, family rights and beliefs of each individual;
- » personal safety;
- » inviolability of property.

While examining the treatment of victims of the armed conflict and their protection, one should inevitably rely on the common basic principles above. They became the basis for the adoption of international instruments of international humanitarian law. Their universality and comprehensiveness are not dependent on qualifications of each individual armed conflict. They derive from the nature of the confrontation, accompanied by casualties: dead, captured, missing. It does not matter whether the conflict is international or non-international. These are people — parties to the conflict or civilians — who suffer from it in the first place. And every one of them has the right for protection of their fundamental rights.

- Decree of the President of Ukraine «On the Decision of the National Security and Defense Council of Ukraine of April 13, 2014 «On immediate measures to overcome the terrorist threat and the preservation of the territorial integrity of Ukraine» of 14.04.2014 № 405/2014// [electronic source]: http://zakon3.rada.gov.ua/laws/ show/405/2014.
- 2 «Poroshenko: Almost 3 thousand people have been released from the militant's captivity»//[electronic source]: http://gordonua.com/news/war/poroshenkoiz-plena-boevikov-osvobozhdeny-pochti-3-tyschelovek-97754.html.
- 3 «Tandyt: Militants resort to blackmail in exchanging of prisoners»// [electronic source]: http://gordonua.com/ news/war/tandit-boeviki-v-voprose-obmena-plennymipribegayut-k-shantazhu-116520.html.
- The law of Ukraine «On Combating Terrorism» of 20.03.2003 No. 638-IV// [electronic source]: http:// zakon4.rada.gov.ua/laws/show/638-15/parao39#o39.
- Man individual captured and/or detained for the purpose of encouraging the public body, enterprise, institution, organization or individuals to carry out an action or refrain from doing any act as a condition for the release of the person captured and / or detained», the Law of Ukraine «On Combating Terrorism» of 20.03.2003 No 638-IV // [electronic source]: http://zakon4.rada.gov.ua/laws/show/638-15/parao39#o39.
- Geneva Convention relative to the Treatment of Prisoners of War, 1949 // [electronic source]: http://zakon2.rada. gov.ua/laws/show/995 153.
- Geneva Convention relative to the Treatment of Prisoners of War, 1949 // [electronic source]: http://zakon2.rada. gov.ua/laws/show/995 153.
- Protocol Additional to the Geneva Conventions of September 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of June 8, 1977 // [electronic source]: http://zakon0.rada. gov.ua/laws/show/995_199/page.
- Protocol Additional to the Geneva Conventions of September 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of June 8, 1977 // [electronic source]: http://zakon3. rada.gov.ua/laws/show/995_200.



THE NEED TO CODIFY THE LEGAL STATUS OF «PRISONER OF WAR» IN NATIONAL LEGISLATION

he rules of the Geneva Conventions provide definitions of the term «POW» (in relation to the international armed conflict¹⁰) and «a person whose liberty has been restricted» (in relation to the non-international armed conflict¹¹) whereas Ukrainian legislation identifies terms «hostage» and «prisoner». If the terms «hostage» and prisoner» are compared in the context of the conflict in Eastern Ukraine, it should be noted that in relation to victims it is more appropriate to use the term «prisoner». Firstly, taking of hostages by terrorist organisations has a special purpose, for instance, to motivate authorised persons to perform certain actions. In case of an armed conflict a purpose like this does not exist according to the international humanitarian law. Secondly, if based on the nature of confrontation rather than legal definition at a national level, the victims of the conflict should be defined as «prisoners» rather than «hostages». Thirdly, if we consider the issue of exchange, the Part 5 of Article 16 of the Law of Ukraine «On Combating Terrorism» determines that during the negotiations the issue of extradition of any person can not be regarded as a condition for the termination of a terrorist act¹². However, with respect to the conflict in Eastern Ukraine, the issue of negotiations with an opposite side for the purposes of exchange of hostages is extremely important due to the conditions they are held in while in detention. And fourthly, international human-

- Geneva Convention relative to the Treatment of Prisoners of War, 1949 // [electronic source]: http://zakon2.rada.gov.ua/laws/show/995_153.
- Protocol Additional to the Geneva Conventions of September 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of June 8, 1977 // [electronic source]: http://zakon3.rada.gov.ua/ laws/show/995_200.
- 12 Law of Ukraine «On Combating Terrorism», of 20.03.2003, No 638-IV // [electronic source]: http://zakon4.rada.gov.ua/laws/show/638-15/ parao39#o39.





itarian law sets the minimum legal guarantees protecting POWs from violations of their rights. Instead, the legislation of Ukraine does not provide specific guarantees within a legal status of «a hostage.»

As noted above, during the conflict in Eastern Ukraine the Interdepartmental Cen-

tre for the Release of Prisoners and the Search for the Missing Persons, created under the auspicies of the Security Service of Ukraine, during its work has registered around 3,000 people as hostages by illegal armed groups. The following analysis can be carried out among the total number of victims:

1.	The main categories	Civilians:	Military:
	affected	 residents of Donetsk and Luhansk oblasts; volunteers who are engaged in humanitarian assistance in the ATO area; clergy; persons not residing permanently in the Donetsk and Luhansk oblasts and staying temporarily in 	 » servicemen of the Armed Forces of Ukraine; » fighters of the National Guard of Ukraine and specialized units of the law enforcement agencies; » fighters of the volunteer units and units formed on a voluntary basis under the coordination of the National Guard of Ukraine and the Ministry of Internal Af-
2.	The ratio of the total number of prisoners	the specified areas 48 %	fairs of Ukraine 52 %
3.	The circumstances of capture	 searches and detention in private residence. at checkpoints. at the workplace. on the street. close to the «target» objects of the armed forces of the self-proclaimed republics 	 during the large-scale military operations. during combat missions (such as relocation, intelligence, checkpoints). during the transportation of the wounded
4.	The term of being held captive	From one day to more than 20 months (excluding hostages held in the territory of the RF)	



In general, it is difficult to form any common categories of victims due to the uniqueness of each individual story of how they were detained and their subsequent detention. Moreover, some detentions were aimed at getting ransom or information from a person. Those civilians, local residents of Donetsk and Luhansk oblasts who take an active civic stance and soldiers who voluntarily enter military service, including fighters of the battalions that were formed on a voluntary basis, suffer the most. Thus, only the consolidated analysis of cases of capture can provide a general idea of the enormity of the problem.

In terms of international humanitarian law, civilians can not be considered as parties to the conflict, provided that they have no weapons and do not act on the side of one of the warring parties. Taking civilians as prisoners is regarded as a gross violation of international humanitarian law, in accordance with Article 34 of the Geneva Convention Relative the Protection of Civilian Persons in Time of War (1949)¹³.

Under Article 41 of the Protocol Additional to the Geneva Conventions (1949) and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of June 8, 1977, a person who is in the power of an adverse Party or who clearly expresses an intention to surrender is deemed to be out of action (hors de combat)¹⁴. Status hors de combat during non-international armed conflict is determined by Article 3 of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949. It specifies that persons who are not actively involved in hostilities and lay down their arms should be treated humanely. Namely, it prohibits the use of torture, cruel treatment, outrages upon personal dignity and taking these persons as hostages¹⁵.

These provisions specify that after a soldier is captured and is under control of enemy, he loses the status of a combatant and is protected in accordance with the norms of international humanitarian law. Namely, it is not permitted to use any physical coercion, abuse of a person and the pun-

Geneva Convention Relative the Protection of Civilian Persons in Time of War of August 12, 1949 // [electronic source]: http://zakon5.rada.

gov.ua/laws/show/995_154/paran64#n64.

- Protocol Additional to the Geneva Conventions of August 12, 1949 and relating to thy protection of victims of international armed conflicts (Protocol I) of June 8, 1977// [electronic source]: http:// zakon3.rada.gov.ua/laws/show/995_199/page.
- of August 12, 1949 and relating to thy protection of victims of international armed conflicts (Protocol I) of June 8, 1977// [electronic sourse]: http://zakon3.rada.gov.ua/laws/show/995_199/page. Geneva Convention relative to the Treatment of Prisoners of War of 1949// [electronic source]: http://zakon2.rada.gov.ua/laws/show/995_153.
- The Legal Regime ot the International Criminal Court. Essays in Honour of Proffesor Igor Blishchenko p. 563//[electronic source]:https://books.google.com.ua/books?id=pF_wVrKev3oC &pg=PA565&lpg=PA565&dq=article+41+hors+de+combat&source=bl&ots=ojJwYvV5YV&sig=z4RGW_m0CX8aCxhh6sGrGSF4XGA&hl=ru&sa=X&ved=0ahUKEwjr_4apz0PMAhXIEiwKHViGC 98Q6AEIPjAF#v=onepage&q=article%2041%20hors%20de%20combat&f=false



ishment without a court's judgment in respect of persons *hors de combat*¹⁶. If these provisions are considered in respect of the armed conflict in Eastern Ukraine, we can say that from the moment of their capture soldiers should be deemed as civilians and be afforded the same levels of legal protection as civilians. No distinction is made between them depending on the duty they performed in the ATO Zone.

The position of the International Committee of the Red Cross on the obligations of States in respect of international humanitarian law is as follows: «The obligation to fulfill international humanitarian law lies primarily in the states. States should take a number of legal and practical measures — both in peacetime and in situations of armed conflict — to ensure respect for international humanitarian law in full¹⁷».

The status of POWs is governed by the Separate Specialiszed Legal Acts of Ukraine:

- » Para. 1.2.31 of the Order of the Minister of Defense of Ukraine «On Approval of the Guidelines on the application of international humanitarian law in the Armed Forces of Ukraine» of 11.09.2004 No. 400 contains the same definition of the POW which is provided in the rules of the Geneva Convention relative to the Treatment of Prisoners of War (1949). In addition, it states that «POWs are under the authority of a State, whose armed forces have taken them captive, but not individuals or military units. Captivity is not a punishment, but a temporary restriction to participate in hostilities»¹⁸;
- » Part III of the Field Manual of the Land Forces of Ukraine «Squad, Unit, Tank Crew» includes Chapter 11 «Internation-

al humanitarian law of warfare. General restrictions of warfare» which defines aspects of the treatment of POWs¹⁹.

The situation in Ukraine which arose as a result of hostilities calls for legislative definition of the status of the victims as a result of a conflict 6. For the Ukrainian society persons who have survived captivity are a new and particularly vulnerable category. The legislation of Ukraine does not provide specific legal rules that would provide for a possibility of receiving qualified medical assistance and legal advice for these persons. Such victims are not officially accounted for and do not have a special status.

- Implementation fo international humanitarian law at the national level: Manual. Reference Book // [electronic source]: https://www. icrc.org/rus/assets/files/publications/ domesticimplementationihl.pdf.
- Implementation of the international legal norms relative to the treatment and protection of POWs into the Ukrainian legislation / M. Glushko// European political and law Discourse – V. 2 issue 1 – 2015 – P. 119-129.
- Field Manual of the Land Forces of Ukraine «Squad, Unit, Tank Crew» // [electronic source]: https://drive.google.com/file/ d/0Bz05CALd9MuOR283Y09kbGpQSjA/view.



Currently, one of the main tasks of the Joint Coordination Centre for the Search and Release of Illegally Imprisoned Persons, Hostages and Determining of the Whereabouts of the Missing in the ATO Zone under the auspicies of the Security Service of Ukraine (hereinafter - «the Center») is tasked with creating and keeping records of military personnel and civilians who have been unlawfully imprisoned or disappeared in the area of the anti-terrorist operation since April 7, 2014²⁰. The Centre is open to the appeals of citizens and is keeping records of the information regarding hostages and the missing in the Donetsk and Luhansk oblasts. Although the creation of the Centre was announced on September 7, 2015, as of today there is no publicly available legal document that would clearly regulate its authority and define the legal status of the above mentioned records. In fact, the work of the Centre in this direction is reduced to collecting information and transferring it to the law enforcement authorities. Instead, it is necessary to codify the legal status of this record-keeping system which should include access to information, accuracy of information and the possibility for the interested parties to get an official confirmation of their captivity/illegal detention.

The issues of legal, social, medical and psychological assistance for those released from illegal detention still remain unresolved. In this respect, vital issues for the released are those of the restoration of their IDs; medical examination, expert assistance; and government's financial support.

In this regard, civilians and military should be considered separately.

After their release and return to the territory controlled by Ukraine, civilians who

were in illegal detention remain virtually alone with their problems. At the legislative level there are no special rules which would perpetuate the right of these persons to receive medical, psychological, legal and social assistance. Only volunteer organisations are involved in the rehabilitation of the released civilians.

To address these issues, the very notion and the status of the «civilian» POW should be legally codified, as well as the legal opportunities for a victim to get social, legal, medical and psychological assistance.

The rules of the Geneva Conventions (1949) do not include provisions that would stipulate general principles of rehabilitation of persons who have survived captivity provided at a national level. For comparison, consider the laws of the United States. Responsibility of the US for the fate of the hostages Government is legally codified. This responsibility includes diplomatic influence, intelligence gathering, and research to support the development of the recovery operations. Under the US Government a separate coordination body — Hostage Recovery Fusion Cell — which defines and recommends recovery program, ensures protection of information on victims, provides support to families of victims was created 21 .

National strategy in the sphere of human rights²² determines the release of the hostages (this term is used in the text of the document) and securing of their rights as one of the strategic directions and aims: to create an effective system of the release from captivity, to secure the rights of the released persons for obtaining medical and legal assistance on the priority basis, to create an effective system of social, including



psychological rehabilitation of the released persons and their families, to conduct an effective investigation of crimes related to kidnapping and hostage-taking²³. For this purpose, the following rules should be legally codified:

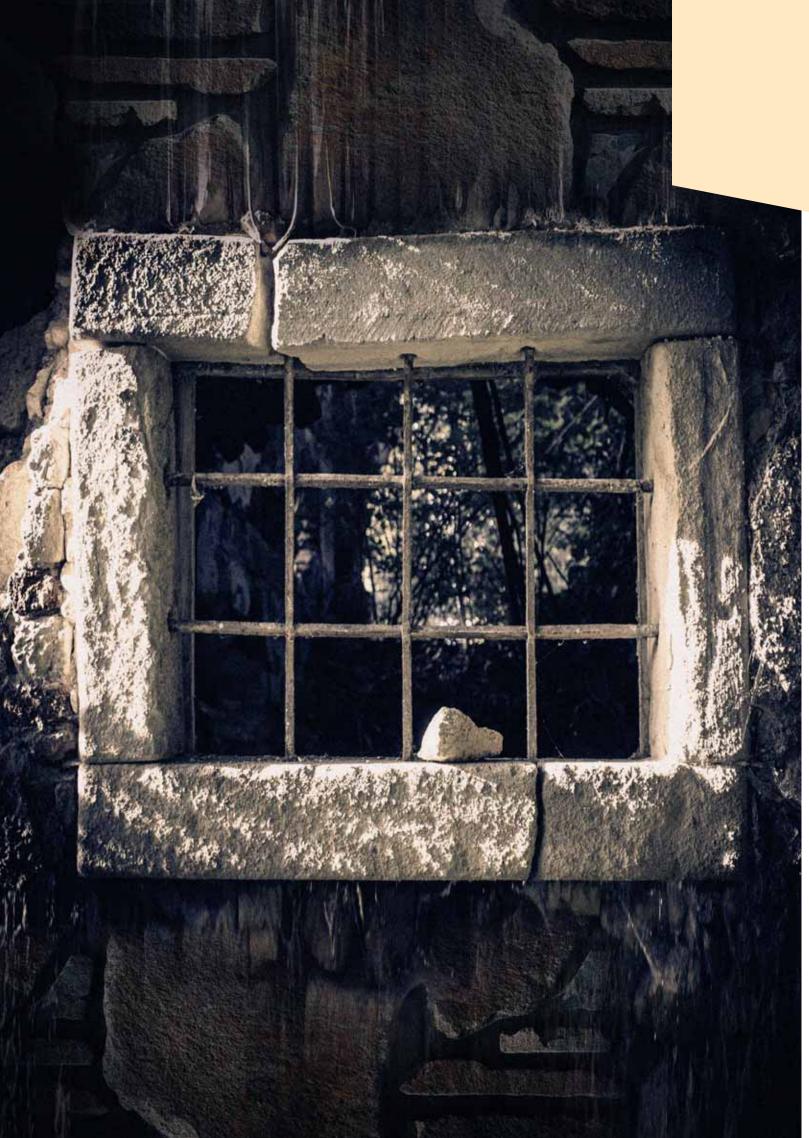
- » creation on the basis of a separate body of a single database of persons who were in captivity during the conflict in Eastern Ukraine, with compulsory indication of the period and place of captivity. It is also important to provide a mechanism of cooperation between that body, law enforcement authorities, volunteers and civil organisations;
- » the rights of POWs to obtain qualified medical, psychological, legal and social assistance;
- » creation of an effective system of release from captivity which means to move the issue from the level of political negotiations and transfer it to the jurisdiction of the International Committee of the Red Cross;
- » medical rehabilitation of POW's, terms and conditions of their return to military service.

So, for the unification of terminology and future clarity of international law application, it is necessary to implement the term «prisoner» into the national legislation for the correct use of terminology and to extend it to the victims of the conflict in Eastern Ukraine. The status and legal guarantees for a person are determined by the provisions of the Geneva Conventions ratified by Ukraine. On their basis, it is necessary to codify the principles of legal protection of victims. On the basis of the Geneva Conventions 1949

and Additional Protocols as well as the Convention on the Protection of Human Rights and Fundamental Freedoms it is also necessary to determine requirements for the treatment of prisoners. A term «POW» which would relate the servicemen taken prisoner should be introduced into national law. These concepts should be used universally and should stem from they legal nature of the events in the East of Ukraine, i.e. the armed conflict.

- Order of the Head of the Security Service of Ukraine «On creation of the Joint coordination centre for search and release of illegally imprisoned persons, hostages and determining the whereabouts of the missing persons in the ATO area» // [electronic source]: http://www. sbu.gov.ua/sbu/control/uk/publish/article?art_ id=131005&cat_id=131003.
- Presidential Policy Directive Hostage Recovery Activities // [electronic source]: https://www.whitehouse.gov/the-pressoffice/2015/06/24/presidential-policy-directivehostage-recovery-activities.
- Decree of the President of Ukraine «On Approval of the National Strategy on human rights» of 25.08.2015 No 501/2015 //[electronic source]: http://zakon2.rada.gov.ua/laws/show/501/2015.
- Decree of the President of Ukraine «On Approval of the National Strategy on human rights» of 25.08.2015 No 501/2015 //[electronic source]: http://zakon2.rada.gov.ua/laws/show/501/2015.





CONNECTION OF POWS TO THE OUTSIDE WORLD

he rules of the Convention relative to the Treatment of Prisoners of War (1949) impose obligation to inform the state party, on which POWs depend, of their capture and staying under the control of the detaining state party the Detaining Power. The rules of international humanitarian law determine that POWs shall not be in isolation. The Detaining Power shall ensure their relations with their relatives²⁴. The procedure for exercising this right by detained persons is clearly defined in the rules of international humanitarian law. Given that the provisions of international humanitarian law were adopted back in the mid-XXth century, nowadays their implementation is supported using more available cotemporary methods.

As regards the conflict in the East of Ukraine, there is a significant problem is the fact of informing person's relatives and military authorities of person's captivity. Almost immediately after being detained, every prisoner is deprived of all means of communication. Starting from that point until the moment of release every person is held in an «information vacuum». POWs have no possibility to periodically communicate with their friends and relatives. This process is fully controlled by the captors. Every phone call to the family is a regardedas demonstration of goodwill and humanity on their part. Usually, POWs are lent a captors' mobile phone with a withheld number for an approximately less than one-minute call. Phone calls are supervised and listened to. Detainees are not allowed to

complain or comment as to the conditions of their. As punishment for disobedience on the phone call prisoners may be subjected to physical violence.

EXAMPLE:

«In late September, we were offered to call home during interrogations. The first time I talked to my wife was on 30.09.2014.»

«We were not allowed to call and inform our friends and family that we were alive. It became possible later. Sometimes, some of the terrorists allowed someone from the prisoners to call the relatives using terrorists' phones. In general, it was prohibited.»

If we consider the detention of POWs by small groups of the opposing side, then the possibility of persons' relations with the outside world is reduced to a minimum. They are kept as so-called «prisoner exchange fund», in case anyone of the opposite side is taken captive by the

²⁴ Geneva Convention relative to the Treatment of Prisoners of War, 1949 // [electronic source]: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/52d68d14de6160e0c12563da0 05fdb1b/6fef854a3517b75ac125641e004a9e68?openDocument



Ukrainian side. Only then, the detainees can be regarded as candidates for exchange.

The actions of superior military authorities in case of captivity of personnel of a military formation should be considered urgent and important. One of the principles of management of the Armed Forces of Ukraine is a principle of unity of command, under which a commander is invested with full powers in relation to subordinates. He incurs a personal responsibility towards the state for all aspects of life and activities of a military unit, a division and every serviceman²⁵. The direct subordination of a serviceman to a commander makes it an obligation for the latter to always have accurate information about the personnel from a division entrusted to him.

If we consider the situation of captivity of servicemen during the conflict in the East of Ukraine using a formalistic approach, it is necessary to highlight some main points. Firstly, it is necessary to prove a fact of captivity of a serviceman by the opposite side. Article 430 of the Criminal Code of Ukraine provides for responsibility of the servicemen for voluntary surrender into captivity due to «cowardice» or «weak spirit». It allows for imprisonment for a term of seven to ten years as a penalty for such an offence²⁶. To date, there have been no sentences under this article according to the Unified State Register of Judgments. However, taking into consideration the current situation with the conflict in the East and the widespread phenomenon of illegal detentions, the likelihood of the state using this article on a massive scale to persecute soldiers with the view to avoid to formally recognise them as victims has increased significantly.

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Secondly, if considering the situation of captivity of servicemen in the context of commanders' personal responsibility for members of their military units, there is a duty to make

an official record of the circumstances of detention of every soldier. During the relevant period in the military units, in terms of personnel accounting, as casualties over the past day, there is an obligation to record data in the form of a name list by the following categories: killed and deseased; missing; prisoners; evacuated wounded; evacuated sick; other losses²⁷. Paragraph 1.11 of the Instructions on Personnel Accounting of the Armed Forces of Ukraine defines the obligation of the commanders of subdivisions, platoons, troops, batteries of relevant devisions and commanders of devisions and services of ships of all ranks:

- » to check personnel before the march, during halts and thereafter, before, during and after operations;
- » regardless of the circumstances to keep count of each soldier who becomes a casualty: why, when, where, under what circumstances it happens;

- The Criminal Code of Ukraine of 05.04.2001 No 2341-III // [electronic source]: http://zakon2.rada. gov.ua/laws/show/2341-14/paran3001#n3001.
- Order of the Ministry of Defense of Ukraine «On Approval of the Regulations on accounting of personnel of the Armed Forces of Ukraine» of 26.05.2014 No 333 // [electronic source]: http:// zakon5.rada.gov.ua/laws/show/z0611-14/page4.
- Order of the Ministry of Defense of Ukraine «On Approval of the Regulations on accounting of personnel of the Armed Forces of Ukraine» of 26.05.2014 No 333 // [electronic source]: http:// zakon5.rada.gov.ua/laws/show/z0611-14/page4.

²⁵ The Law of Ukraine «On the Internal Service Statute of the Armed Forces of Ukraine» of 24.03.1999 No 548-XIV // [electronic source]: http://zakon0.rada.gov.ua/laws/show/548-14/parao53#o53.

» every day and after every combat action to report to his superior commander on the presence and the loss of personnel²⁸.

Therefore, during the hostilities commanders shall be accountable for making clear and complete lists of casualties in devisions over the course of combat missions. Commanders shall bear personal responsibility for each soldier under their command. Every day, after the arrival of the unit from operations, the personnel situation shall be noted in the official summary lists.

Captivity of servicemen is considered to be a loss of military personnel. To determine the circumstances, military commanders must conduct an official investigation. Under the provisions of the Instructions on Official Investigation Procedure in the Armed Forces of Ukraine, an official investigation is to be conducted in the case of, in particular, failure or negligent attitude to abide by orders and other guideline documents that may adversely affect or has affected the combat effectiveness, combat readiness of divisions or military units²⁹.

Provisions of the said Instruction alone do not provide for an internal official investigation into a criminal offence committed against servicemen. Consequently, no possibility is determined for military commanders to apply to competent authorities in regard of the said fact. If only during an official investigation, it is ascertained that a serviceman's offence bears signs of a criminal offence, a commander of the military unit is to notify a pre-trial investigation body of thereof in writing³⁰.

Therefore, if we consider the relevant provisions of the Criminal Procedure Code of Ukraine, it should be highlighted that a superior commander is entitled to turn to law enforcement agencies with a statement of an offence committed against his subordinate. This

possibility, enshrined in law must be mandatory for military units. It is needed to provide for a possibility to file internal official investigation documents conducted by military units to pre-trial investigation bodies.

Specific Instructions also provide for procedure for informing about incidents, criminal offences, administrative corruption and military administrative offences, breaches of military discipline and relevant statistical information in the Ministry of Defence of Ukraine and the Armed Forces of Ukraine. Therefore, a report consists of information about incidents, criminal offences, administrative corruption and military administrative offences given orally or in writing to the Head of a competent management authority of the Military Order Service in the Armed Forces of Ukraine, a pre-trial investigation body³¹.

Order of the Ministry of Defense of Ukraine «On Approval of the Instruction on official investigation in the Armed Forces of Ukraine» of 15.03.2004 No 82 // [electronic source]: http://zakon0.rada.gov. ua/laws/show/z0385-04.

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- Order of the Ministry of Defense of Ukraine «On Approval of the Instruction on official investigation in the Armed Forces of Ukraine» of 15.03.2004 No 82 // [electronic source]: http://zakon0.rada.gov. ua/laws/show/z0385-04.
- 31 Order of the Ministry of Defense of Ukraine
 «On Approval of Instruction on how to provide
 reports and dispatches on the incidents, criminal
 offenses, administrative corruption and military
 administrative violations, violations of military
 discipline and their registration in the Ministry
 of Defense of Ukraine and the Armed Forces of
 Ukraine» of 02.07.2013 No 444 // [electronic
 source]: http://zakon3.rada.gov.ua/laws/show/
 z1536-13.





The Instructions require prompt provision of information about a criminal offence. However, some points are still of concern:

- » the captivity of a serviceman is not defined as a specific incident that should be reported;
- » there is no responsibility of military commanders for failure to submit or late submission of the reports.

Following the official investigation, an officer of a military unit makes a relevant decision within ten days after the review of an investigation report and case file. In case of a member of military unit being taken prisoner, such persons are to be registered separately by a decision in the form of an order according to which they are to be removed from the military unit staff list and their salaries are settled.

In such a case, the servicemen's financial support is payable to their families. According to para. 6-1 of Article 18 of the Law of Ukraine «On social and legal protection of servicemen and their families», families of servicemen who serve during the relevant period declared according to the Law of Ukraine «On defence of Ukraine» are secured with payment of salaries of these servicemen in case of failure of the latter to get paid while participating in hostilities and operations³². The procedure for such payments is determined under para. 12.2

of the Instructions on procedure for payment of salaries to servicemen of the Armed Forces of Ukraine and some other persons³³.

Thus, the current system of laws and regulations clearly regulates the procedure of internal actions of superior military commanders of the Armed Forces of Ukraine in case of captivity of servicemen. It needs to be expanded to cover the National Guard of Ukraine, Ministry of Internal Affairs of Ukraine and volunteer battalions. In addition, in practice, not all the commanders of military units demonstrate responsible attitude to the implementation of the said provisions. The main problem areas remain as regards full and comprehensive investigation into illegal detention of servicemen.

- 32 The Law of Ukraine «On social and legal protection of servicemen and their families» of 20.12.1991 No. 2011-XII // [electronic source]: http://zakon5.rada.gov.ua/laws/show/2011-12/paran353#n353.
- Order of the Ministry of Defense of Ukraine «On Approval of Instruction on the payment of salaries for the servicemen of the Armed Forces of Ukraine and some other persons» of 11.06.2008 No. 260 // [electronic source]: http:// zakon3.rada.gov.ua/laws/show/z0638-08/page.



O ILL-TREATME NT OF POWS

3.1. PROHIBITION OF TORTURE IN INTERNATIONAL LAW

Definition of illegal detention as a category within the armed conflict is directly linked to the right to life³⁴. In situation of hostilities, persons are in need of special protection. They voluntarily expose themselves to danger by taking part in hostilities. The adherence to the rules of war and international humanitarian law guarantees a POW the appropriate level of treatment under conditions of the observance of fundamental human rights by their captors.

The laid down rules have become a collection of customary practice relating to the treatment of the victims of war. Firstly, they ensure respect for person's physical and psychological integrity. Combatants who have taken part in the hostilities deserve to be respected by the opposing side. On the other hand, the setting of common provisions made them rather static. The rules adopted in 1949 do not meet the requirements of ongoing armed conflicts and today's needs. Currently, they are not to be interpreted literally, in terms of textual presentation of rules, but as guiding ideas, fundamental principles that guarantee POWs the following:

» protection from unlawful deprivation of life;

- » protection from torture, physical violence, psychological abuse;
- » acceptable conditions of detention that are not detrimental to person's health and ensure minimum sanitary and hygiene;
- » respect for person's private and family life;
- » protection from prosecution for actions committed during the hostilities.

Responsibility for treatment of POWs during international armed conflicts is borne by the State, agents of which keep persons detained. This is justified by subordination within the military sphere. The top military commanders of the state are directly responsible for the actions of their military units and armed formations during the hostilities³⁵. That is, in situations of armed conflicts, if a person is recognised to be a

The formation and specificity of the international legal regime of POWs / M.V. Grushko // Thesis for the degree of Doctor of Law. - Odessa – 2015 // [electronic source]: http://dspace.onua.edu. ua/bitstream/handle/11300/2324/Grushko_diss. pdf?sequence=6&isAllowed=y.



combatant under the provisions of international humanitarian law, then the state, which this person represents, is responsible for this person's actions. Person's actions must comply with the laws and customs of war, and the person must be responsible for their violations.

The Geneva Convention relative to the Treatment of Prisoners of War defines basic requirements that must be met by the Detaining Power:

- » every prisoner shall be identified;
- » it is forbidden to inflict torture, threats, intimidation on POWs to secure information of any kind whatever during their questioning;
- » all effects and articles of personal use and articles issued for personal protection shall remain in the possession of POWs. The same requirement relates to personal badges of rank and nationality. Money and articles of value will be withdrawn from prisoners, but shall be returned at the end of their captivity;
- » POWs must be protected against acts of violence or intimidation and against insults and public curiosity ³⁶.

As for the actual conditions of detention for POWs, the Power, which is responsible for them, is obliged to provide favorable conditions for POWs which are not detrimental to their health. Requirements relating to the cells and their equipment for accommodating POWs shall be the same as the requirements for space in cells and their equipment, which the Power uses for their own soldiers.

The premises provided for the use of POWs individually or collectively, shall be entirely protected from dampness and adequately heated and lighted, in particular between the dusk and the period when the lights are out³⁷. It is stressed that men and women shall be kept in separate cells.

The basic daily food rations shall be sufficient in quantity, quality and variety to keep POWs in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners. Sufficient drinking water shall be supplied to them. The use of tobacco shall be permitted. The POWs shall, as far as possible, be involved with the preparation of their meals; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing, themselves, the additional food in their possession³⁸.

The Detaining Power shall also supply clothing and footwear to POWs, making allowance for the climate of the region where the prisoners are detained. The above articles shall be provided in sufficient quantity and their regular replacement and repair shall be assured. In addition, POWs who work shall receive appropri-

- Convention respecting the Laws and Customs of War on Land of 18.10.1907 // [electronic source]: http://www.jus. uio.no/english/services/library/treaties/05/5-01/customswar-land.xml
- ³⁶ Geneva Convention relative to the Treatment of Prisoners of War, 1949 // [electronic source]: https://ihl-databases.icrc. org/applic/ihl/ihl.nsf/52d68d14de6160e0c12563da005fdb1b /6fef854a3517b75ac125641e004a9e68?openDocument
- 37 Geneva Convention relative to the Treatment of Prisoners of War, 1949 // [electronic source]: https://ihl-databases.icrc. org/applic/ihl/ihl.nsf/52d68d14de6160e0c12563da005fdb1b /6fef854a3517b75ac125641e004a9e68?openDocument
- 38 Geneva Convention relative to the Treatment of Prisoners of War, 1949 // [electronic source]: https://ihl-databases.icrc. org/applic/ihl/ihl.nsf/52d68d14de6160e0c12563da005fdb1b /6fef854a3517b75ac125641e004a9e68?openDocument



ate clothing, wherever the nature of the work demands. All necessary sanitary measures shall be taken in camps: proper conveniences, which conform to the rules of hygiene and are maintained in a constant state of cleanliness; baths and showers shall be provided with sufficient water and soap; separate facilities for washing their personal laundry.

An adequate infirmary shall be arranged where POWs may have the attention they require. Medical assistance shall be provided, preferably, by medical personnel of the Power on which they depend and, if possible, of their nationality. POWs may not be prevented from presenting themselves to the medical authorities for examination. Medical inspections of POWs shall be held at least once a month. They shall include the checking and the recording of the weight of each POW. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially tuberculosis, malaria and venereal disease³⁹.

Complementary to the rules of international humanitarian law, persons kept captive in the uncontrolled territory are protected by the rules of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950). Article 3 of the Convention protects persons from torture or inhuman or degrading treatment⁴⁰. The case-law of the European Court of Human Rights underlines that when determining whether certain form of ill-treatment can be characterized as torture, one should consider the distinction laid down in Article 3 between this concept and the concept of «inhuman or degrading treatment.» Difference between these concepts in the Convention demonstrates the intention to give special shamefulness to deliberate inhuman treatment causing very serious and cruel suffering. Along with cruelty of treatment, an evidence of torture is the existence of purpose of such treatment, as

recognized in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1 of which defines torture as the intentional infliction of severe pain or suffering, in particular, for such purpose as obtaining information, punishing or intimidating⁴¹.

Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment understands torture as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity⁴².

In the case of *Kalashnikov v. Russia*, the European Court of Human Rights delivered the

- ³⁹ Geneva Convention relative to the Treatment of Prisoners of War, 1949 // [electronic source]: https://ihl-databases.icrc. org/applic/ihl/ihl.nsf/52d68d14de6160e0c12563da005fdb1b /6fef854a3517b75ac125641e004a9e68?openDocument
- 40 Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950 // [electronic source]: http://www.echr.coe.int/Documents/Convention_ENG.pdf
- 41 Case of Nechyporuk and Yonkalo v. Ukraine, Application No. 42310/04, judgement of 21.04.2011, para. 101 // [electronic source]: http://hudoc.echr.coe.int/eng#{%22fulltext%22: [%2242310/04%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22item id%22:[%22001-104613%22]}
- 42 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10.12.1984 // [electronic source]: http://www.ohchr.org/EN/ ProfessionalInterest/Pages/CAT.aspx



judgement of a violation of Article 3 of the Convention regarding the conditions of detention of the applicant, including the following circumstances of the case:

- » total area of the premises where the person was detained;
- » number of persons who were constantly in the cell;
- » number of beds for sleeping in the premises;
- » availability of constantly turned on light in the cell;
- » availability of adequate ventilation in the premises;
- » opportunity to go out to get fresh air;
- » conformity to sanitary requirements of facilities;
- » access to a toilet facility and possibility to use it⁴³.

In addition, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment specified the standards that determine adequacy of place for temporary detention:

- cells should be clean and of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting sufficient to read by (sleeping periods excluded), ventilation; preferably cells should enjoy natural light (windows);
- cells should be equipped with a means of rest, i.e. have a fixed chair or bench. Persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets;

- persons in custody should have access to a proper toilet facility under decent conditions, and be offered adequate means to wash themselves;
- persons in custody should have ready access to drinking water and be given food at appropriate times, including at least one full meal every day;
- person held in custody for 24 hours or more should, as far as possible, be offered outdoor exercise every day;
- cells intended for single occupancy for stays in excess of a few hours should be ca. 7 m2. Cells of a size over 4 m2 are considered adequate for staying overnight. Those that are less than 4 m2 can be used only for a few hours. Cells of a size less than 2 m2 shall not be used for detention of people⁴⁴.

In general, the rules of international humanitarian law contain quite clear and strict requirements concerning the treatment of POWs and conditions of their detention. In this area, the provisions of the Geneva Conventions are closely intertwined with the fundamental human rights that protect life, honor and dignity of a person.

- 43 Case of Kalashnikov v. Russia, application no. 47095/99, judgment 15.10.2002 § 97-102. // [electronic source]: http://hudoc.echr.coe.int/ eng#{%22fulltext%22:[%2247095/99%22],% 22documentcollectionid2%22:[%22GRANDC HAMBER%22,%22CHAMBER%22],%22item id%22:[%22001-60606%22]}
- 44 Committee for the Prevention of Torture: Standards. «Substantive» sections of the CPT's General Reports // [electronic source]: http:// www.cpt.coe.int/en/documents/eng-standardsscr.pdf



3.2. INFLICTION OF PHYSICAL VIOLENCE ON POWS IN THE EAST OF UKRAINE

Civilians

Peaceful citizens of Ukraine in Donetsk and Luhansk oblasts are suffering from persecution. They are not directly involved in the hostilities, do not have weapons and do not act for any party to the conflict. The main reasons for their detention are confined to the position of civilians and their support of one of the warring parties.

EXAMPLE:

«...They were dressed in camouflage. Of insignia on clothing, they had patches «LPR commandant's office» and St. George ribbons. They were armed with AK type assault rifles, F— 1grenades, combat knives.

Then the terrorists went around the apartment and made sure that there was nobody there except us. They asked whether there were weapons in the house. I said no. Then they asked if I knew why they had come. I said no. They replied they had received a call that someone had been watching through binoculars from my balcony. That could not be.

The girlfriend and I have always supported the integrity of Ukraine, and that was why, we have always taken part in all pro-Ukrainian rallies in the city. Due to that, there were Ukrainian flags and symbols, leaflets, flyers in the apartment, there were blue and yellow paint cans on the balcony ...»

The civilians may also be detained while staying in the area of anti-terrorist operations for

the purposes of humanitarian assistance and volunteer help.

EXAMPLE:

«...On my way from one to the next checkpoint, approximately 15 km, there was a checkpoint of the RPA (Russian Orthodox Army). It was quite small, 10-15 men.

There, their soldiers came up at once, got me out of the car, laid me face down on the pavement, began to take everything out of the car, started beating and kicking me, also using buttstocks, anyway they could.

When they were kicking me, I tried to protect kidneys with my hands; they called their fellow soldiers to stretch me, so that I couldn't cover my kidneys. One more thing that I remember is that one took out a bulletproof vest, which I brought, and started hitting me on the head with it. I lost consciousness. I remember that they beat me ca. 20 minutes, but what happened then — I do not remember ...»

The civilians are also detained for the purpose of getting ranson for their release.

EXAMPLE:

«...A militant, in turn, demanded 50,000 euros from me, giving me a choice: either I would give money or he would send me to trench-digging forced labor. My family and I did not have such money. The militants took away all the savings that we had, as well as household appliances and cars. So, in my thoughts I was preparing myself for forced labor ...»



Military

The purpose of the physical abuse applied to POWs by illegal armed groups can be:

— obtaining information about positions of the armed forces;

EXAMPLE:

«At the checkpoint, I was also questioned. They were interested in positions of units of the Armed Forces. I replied that I did not have such information, as I did not belong to the officers, and even did not know the unit site, where I served ...»

personal humiliation of servicemen;

EXAMPLE:

«Next to every house and during halts we experienced abuse. We were forced to repent and admit our guilt in the shelling of the city in public; they forced us to kneel, they spat in our faces, ripped crucifixes off our necks, beat and kicked at random all over the body, treated us with disrespectful, malicious, insulting words. All that happened was recorded on camera ...»

«... Then I was transferred to the other site and brought down to the basement. I fell down. I was untied and said to unbind my eyes. There was shooting room in that basement. They pressed me against the wall and shot over the head. The one, who fired, came up to me and told me, «You're an experienced old hand, not afraid of anything.» Then he put me on a chair and I felt a strong blow to the back and fell from the chair. Falling, I turned around and saw that the man had a square iron pipe 60x60 cm wrapped with duct tape in his hands. Then he started beating me with that pipe ...»

— abuse of persons for the purpose of demanding ransom from his next of kin;

EXAMPLE:

«...When I was driven along the road, they beat me all the time. Having reached a house (as I understood they stayed there), I was undressed, searched. I had a cell phone, a passport, where there was a letter from my wife, my salary with me. They seized all the things they found. When they read the letter, they asked whose letter it was. I replied my wife's. One of the terrorists began to look for her name in my phone, and then started calling her. He put the phone up to my ear and asked to speak to her. When she answered, I just said, «I am sorry». Thereafter he took the phone away. Then, the terrorist began to speak to my wife, threatening her that he would kill me, cut my earoff, etc., if she did not pay ransom for me. I was so much exhausted and beaten, that I do not remember the whole conversation ...»



EXAMPLE:

«...He showed a hammer, pliers, and a soldering iron. He told how he would crush and burn my limbs. Then his two companions beat me on the head, back and sides, pressed a gun at first to the head then to my legs, fired into the air, into the floor. He asked whether I had children and finding out that children were not in Luhansk, said that he would make them comeover and when they arrived, he would skin them alive, and my wife and I would watch that. Then he demanded to write an explanation how I got in the basement and that I am a Nazi...»

It is also important to underline that such treatment of POWs is a kind of «entertainment» for detaining persons. Aggression against prisoners by the opposing side appears to be particularly cruel when the guards are drunk or drugged.

EXAMPLE:

«... As I learned later, after 9 p.m., the terrorists behaved quite freely in the premises: drank alcohol, smoked weed. Then, drunk and stoned, the militiamen began to «entertain» themselves — they sent for prisoners and began to beat them. That happened every night. Particular attention was paid to those prisoners who had just arrived, and such treatment lasted in the first three days of imprisonment ...»

Analysing witness statements of persons who survived the captivity, it is possible to conclude

that in most cases physical abuse was applied to detainees. The POWs could be beaten with hands, feet, buttstocks, hammers, sticks, metal pipes — any objects within caports' reach.

EXAMPLE:

«...I was called in for questioning by a man knicknamed «Silent» who beat me on my head with a book ...»

«...The terrorists beat POWs, including me, with square iron pipe wrapped in carton, chair legs, hands and feet. They beat all over the body at random, on the head. There were 3-4 minute breaks as they swaped. The terrorists filmed the beatings ...»

The representatives of the opposing side also apply electric current to POWs.

EXAMPLE:

«...There were nine rooms in the basement and the terrorists intimidated us that only those strong in spirit would survive. In the first room, they beat on legs, back. In the second room, they forced to grasp live wires; otherwise, they threatened to kill an inmate. I was in those two rooms where they beat me, and where I had to hold the live wires. Other prisoners were brought to other rooms. Some of the prisoners had their hands ironed by terrorists...»



The opposing side used air guns against the unarmed persons to inflict maximum suffering on POWs.

EXAMPLE:

«... I was taken aside and had both legs shot with air gun, several bullets were also fired into my body ...»

In addition, as a reminder of captivity, the persons have traces of stab and cut wounds left after tortures.

EXAMPLE:

«...«Chenghis» liked knives. I have about 7 or 8 cut wounds after talking to him. He also made the cut behind my ear and began to scrape my skull with knife. While doing so he commented, «How much fun it is all the cracking there inside of you» ...»

«... Then I was brought into the study room, they made me sit at the table. There was a small mirror, which they broke, and I was told either to start speaking, or they would cut my veins, and I would «drop dead» there, and no one would point to them, as everybody would say that I had cut the veins by myself. They took my left hand, held it tightly, and said not to twitch otherwise it would be worse. They started lining with a sliver on the arm. The sliver did not cut the skin, but tore it. They saw veins from my arm, but intentionally lined with the sliver near the veins. At some point, they cut the skin next to the vein so that it became visible. I still have the scars ...»

«...I remember quite well, someone offered to castrate me. They began to take my pants off. Then, having changed their minds they decided to cut my leg off. They buried the knife in my left leg, apparently trying to cut it off, I blacked out again ...»

As a kind of abuse against persons, they forced tired out prisoners to do excessive physical exercises.

EXAMPLE:

«...We were also tortured in the form of physical exercises: we were forced to do 200-300 squats or push-ups. As for me, on 15.09.2014, I was forced to do 1000 squats...»

The opposing side takes POWs as a means of vengeance. They are not treated as individuals. All the torture against them inflicts not only physical suffering, but it is also aimed to destress prisoners.

EXAMPLE:

«...I was hung. Really, by the chair was kicked from under me. Next thing, the cord broke. I was lying on the floor when, one of them said, «Who is for not to killing him?» No one raised his hand. He continues: «Who is for killing him?» Plenty of hands...»

"...when I did not get out of bed, perhaps, they realised that they beat me too much and left me alone. I made a stick from the mop to lean on, as I had terrible problems with my leg, the knee was wrenched..."



"...After being severely beaten I could not move on my own, did not feel my legs up to the pelvis, they damaged my pelvis and spine, ribs, head; I turned the leg. Then I counted 52 wounds inflicted by a club on one knee. The entire floor within 2 meters was covered with blood. Every part of my body was beaten. They broke my arm - the left hand, two fingers on my left hand. That hand suffered the most, as when they finished bludgeoning, I was lying on my right side and the left hand was at the top. They sent for our guys to the basement and they seized my clothes and brought me in. I was beaten within an inch of my life..."

"...when I was all beaten and cut, they brought a rope and a flask with water. It would seem what can be done with a rope? Well, one can strangle a man, but why they needed water, I thought. Soon I found out why. They started strangling me with the rope, after a while, I blacked out. Then they doused me with water. I came round, started galping for air. They tightened the rope, really hard. Again, I fell insensible. Then they did it again. Inhuman pain..."

The case-law of the European Court of Human Rights highlights the unacceptability of ill-treatment of victims. The decision of the Commission on Human Rights in the «Greek cases»⁴⁵

underlines that «inhuman treatment includes at least such treatment as deliberately causes severe suffering, mental or physical, which, in the particular situation is unjustifiable.» Making a distinction between actions prohibited by Art. 3 of the Convention and «some brutal treatment» (blows to the face) the Commission stated that not every case of ill-treatment can fall within the scope of this article.

Subsequently, the judgment in Ireland against the United Kingdom⁴⁶ outlined that principle, stating the need to establish the facts that prove the action has reached the severity threshold, which could be deemed to constitute torture or inhuman or degrading treatment. This approach confirms the coherence of these provisions, as assessment of severity of actions as defined by the Court is not absolute and can be given only through the analysis of all circumstances of the case. These include the duration of the treatment, its physical or mental effects, sex, age and state of health of the victim. If, for the Court, the treatment can not be classified as torture, then it can be re-classified as inhuman treatment, and in case of failing to classify it as inhuman treatment, it is re-classified as degrading one⁴⁷.

Therefore, restrictions on treatment set by the rules of international humanitarian law and human rights are not applied to persons captured by members of illegal armed groups of the self-proclaimed republics. Militants' actions are aimed at causing maximum physical harm to persons. They do not adhere to the fundamental principles of respect for life, health, honor

⁴⁷ The main provisions of the concept of the prohibition of ill-treatment of a person in the case-law of the European Court of Human Rights / E. Shishkina // Bulletin of Lviv University. A series of international relations — 2011. — Issue 28. — P. 139-149.



⁴⁵ The Greek case (appl. no. 3321/67 Denmark v. Greece, appl. no. 3322/67 Norway v. Greece, appl. no. 3323/67 Sweden v. Greece, appl. no. 3344/67 Netherlands v. Greece) – 1969 — § 186.

⁴⁶ Case of Ireland v. the United Kingdom, appl. no. 5310/71, judgement 18.01.1978 — § 167.

and dignity. The witnesses describe the cruelty applied to POWs by the opposing side. In situations of armed conflict, the parties are obliged to adhere to the standards of international law. In case of their total disregard, the actions of those responsible shall be taken as war crimes. However, in this aspect the the importance of proof: should be emphasised in order to bring charges against a particular suspect and every effort should be made by the investigators in order to collect every shred of evidence pointing to their guilt.

3.3. BASIC FORMS OF PSYCHOLOGICAL AND MORAL PRESSURE EXERTED ON POWS

A proof of the inhuman treatment is not necessarily associated only with physical violence. In the judgments in the «Greek case»⁴⁸, *Ireland against the United Kingdom*⁴⁹ the Commission and the Court, defining the concepts of «inhuman treatment» and «degrading treatment», introduced new aspects — mental anguish and suffering, as integral signs of ill-treatment and violation of requirements of the indicated article⁵⁰. The infliction of physical pain can not always be a reason for such classification, indeed treatment can be considered inhuman if it lasts for hours and causes physical injury, psychological and mental anguish (case of *Soering v. the United Kingdom*⁵¹) — that is to classify treat-

ment as inhuman the existence of physical suffering is not necessary⁵².

Analysing the attitude of members of the illegal armed groups of the self-proclaimed republics to POWs it seems their goal is the moral humiliation of persons who are kept captive by them. Exerting psychological pressure on certain individuals, the representatives of the opposing side reveal personal hostility not so much toward certain individuals as toward the Ukrainian military as a whole. The general perception of the Ukrainian military amounts to the concepts of «murderer» and «fascist», which are widely used by Russian TV channels for propaganda purposes.

EXAMPLE:

«...We were called «fascists», «Nazis», «ukrops» (Ukrainian opposition followers), «banderovets» (Bandera followers), «punishers». Unsabstaniated, completely absurd accusations were uttered against us. They articulated opinions that Ukraine as a state and Ukrainians as a nation do not exist at all. It was common that they shouted swear words at us. They made comments about appearance (for example, I have a Ukrainian Cossack hairstyle with long hair – «scalp lock»),

⁵² The main provisions of the concept of the prohibition of ill-treatment of a person in the case-law of the European Court of Human Rights / E. Shishkina // Bulletin of Lviv University. A series of international relations — 2011. — Issue 28. — P. 139-149.



⁴⁸ The Greek case (appl. no. 3321/67 Denmark v. Greece, appl. no. 3322/67 Norway v. Greece, appl. no. 3323/67 Sweden v. Greece, appl. no. 3344/67 Netherlands v. Greece) – 1969.

⁴⁹ Case of Ireland v. the United Kingdom, appl. no. 5310/71, judgement 18.01.1978.

⁵⁰ The Greek case (appl. no. 3321/67 Denmark v. Greece, appl. no. 3322/67 Norway v. Greece, appl. no. 3323/67 Sweden v. Greece, appl. no. 3344/67 Netherlands v. Greece) – 1969. Case of Ireland v. the United Kingdom, appl. no. 5310/71, judgement 18.01.1978.

⁵¹ Case of Soering v. the United Kingdom, appl. no. 14038/88, judgement 07.07.1989 // [electronic source]: http://hudoc.echr. coe.int/eng?i=001-57619&v=1392752313000#{«itemid»:[«001-57619»]}.

religious beliefs (for example, Orthodox Christians from our battalion have no right to believe in the Christian God)...»

Moreover, militants are particularly cynical about the Ukrainian state and revolutionary symbols.

EXAMPLE:

«...Then «Hivi» took a knife from one of the terrorists and began to cut the Ukrainian flag patches off the sleeves of our uniform, and forced us to eat them...»

"...for his tattoos with the trident, blue and yellow, red and black flags he had to do about thousand squats and thousand pushups..."

"... by twos they started bringing us to the basement of the building. There was a Ukrainian flag lying at the entrance, on which we had to wipe our feet. Everyone tried to step or jump over it. For doing that, we immediately received a blow to kidneys from the guards, as several guards watched us stepping on the flag ..."

The actions of representatives of the self-proclaimed republics towards POWs show that their lives are not important for them. They try to intimidate and humiliate them.

EXAMPLE:

«... Then I was blindfolded, pressed to the wall, they aimed at me assault rifles and guns and said to me, «your last wish». So, I said, «At least return my body back home.»

One of the terrorists said, «Your wish is not bad.» Then the terrorists fired over my head, faking shooting. In that way they checked my psyche ...»

«...Twice I was shot, once they taped a piece of paper on my eyes, taped my hands, and forced me to kneel, forehead to the wall. Honestly, these moments were scary, very scary. They started shooting from air guns. Sometime later, they sent for me to work, whether they did not like me or I did something wrong, I was pushed, I fell down, the guard came up behind me and said, «In the name of the DPR, you are sentenced to shooting, the order is to be executed on the spot» — and the automatic gunfire whizzed over my head...»

«...We were forced to kneel along the edge of the precipice, they tied our hands behind our backs and our eyes with white cloths; running out of cloths they taped the rest forcing them to close their eyes. After a while there followed a volley of automatic gunfire...»

«...At about 5 a.m. on 27.08.2014, I was woken up and brought to the TCC courtyard in Snizhne. It was still dark and cool outside. There were 5 people in the courtyard. They brought me to the wall and delivered the so-called «death sentence», said something like, «In the name of the DPR, I am sentenced to death.» Then, they reloaded guns and shot an assault rifle. At that moment, I said goodbye to the life in my thoughts. However, they missed. I realized that the terrorists were not trying to strike. The first staged execution was followed by the second, then the third,



and so several times. Especially scary it was during the first two shootings. Then I felt only tiredness and distress. That time I heard sneers, rude and offensive comments hurled at me ...»

In addition to constant threats, the communication of the opposing side with POWs is characterized by humiliation and abuse of a person.

EXAMPLE:

«...They forced us to jump after the words, «Who is not jumping, is a moskal». To my objection that I could not jump because of the leg injury, they threatened to kill me. Such jumps caused horrible physical pain...»

«...I was brought into the room, forced to kneel and they turned on the TV set. A video was broadcast showing the results of the explosion and civilian — victimsf. In particular, some people had serious injuries, like torn off legs. After the video presentation we were told that we were guilty in that and similar situations, including artillery shelling of Donetsk, and therefore should sincerely repent what we had done. Our repentance was to be recorded on video. I tried to explain that we were not involved in the shelling of Donetsk. However, with several blows, they quickly made it clear to me that a disagreement would make it worse. A video recording process was long and exhausting. In front of the camera, we had to pretend genuine and sincere repentance. The terrorists of the DPR and video operators wanted us to cry and show

astonishment of what we had seen, confess to the crime and ask for forgiveness. When we ran out of artificial tears, the video recording stopped. We were beaten, and then they continued recording. It lasted for about 1.5 hours successively. That video was edited for the Russian news and Donetsk local channels ...»

A special attitude of the opposing side also revealed itself in the use of POWs as a means of psychological and physical stress relief. Persons under their control were subjected to constant mental and emotional abuse.

EXAMPLE:

«...For the first two weeks we were being psychologically and physically destroyed: they did not allow us to sleep; could come into the cell any time and yell, «Who is here from Donetsk, oblast, Kyiv?» Then, there followed the beating outside the cell with truncheons and kicks. During the night, that could be done 3-4 times. Moreover, when terrorists returned after unsuccessful operations, they could again visit us in the cell and let their anger out on us. They exerted constant mental pressure. We lined up and they preached at us about our «crimes in Donbas». In addition, we were ordered to line up every time, when someone of the terrorists entered the cell. It was forbidden to sit, lie or smile ...»



«...From time to time, representatives of the Russian World sect entered the premises. They told about the Dulles' plan, their faith, the Lada-Mother of God and many other things that stuck in the memory. Those conversations lasted three or four hours, after which we had a headache ...»

«...we were brought to the courtyard of the O. Zakharchenko's depot, where there were many people: leaders of different DPR structures, DPR supporters and O. Zakharchenko. We were ordered to kneel and keep heads down. The terrorists threatened that they would shoot or hang us. It was so humiliating to stand like that. We stood kneeled for 4 minutes, and then O. Zakharchenko came and told us to get up. We had a so-called «political propaganda hour»: how awful the Ukrainian government («junta») and the ATO command were; we were accused of killing civilians, firing missiles in residential neighborhoods of the city ...»

«Next to every house and during halts we experienced abuse. We were forced to repent and admit our guilt in the shelling of the city in public; they forced us to kneel, they spat in our faces, ripped crucifixes off our necks, beat and kicked at random all over the body, treated us with disrespectful, malicious, insulting words. All that happened was recorded on camera ...»

Considering the above, it is possible to conclude that the captivity of a person is taken by the opposing side as person's falling under their full control and the captors take it as an opportunity for unlimited physical and moral abuse of POWs for a wide range of purposes without any notion of accountability for such crimes on their part.

3.4. GENERAL CONDITIONS OF DETENTION FOR POWS IN THE EAST OF UKRAINE

Given the fact that in situation of the conflict in the East of Ukraine it is the illegal armed formations of the self-proclaimed republics or the state responsible for their actions who is responsible for the detention of POWs the aoolication of international law id automatically disregarded. The premises for POWs are located in the former buildings of state authorities, hotels, universities, military units. Moreover, small groups of POWs can be detained in the basements of some residential houses, shops and utility rooms.

At present, it is difficult to assess the total number of places of detention in the territory of the DPR and LPR. The recording of the places is carried out by the Ukrainian law enforcement agencies and non-governmental organizations documenting human rights violations in the East of Ukraine during the conflict. For example, in Donetsk oblast there can be identified about twenty-seven major centers that have become detention places for POWs. More information can be found about the former building of the Security Service of Ukraine (the SBU), located in 62, Shchorsa Str., Donetsk.

«...in the SSU building there are three prisons, where the prisoners are heldd: for military and volunteers («hut»), for civil and women («pit»), a specialized facility «basement»...»



The first room is general for detaining POWs. A number of persons detained at different times therein reached from forty to two hundred people.

«...All POWs were accommodated on the ground floor in premises of the former archive room. The room was the size of 5x15 m. There were metal racks that earlier were 6-tier archival storage shelves. As the room was being filled with POWs, these racks were also filled up...»

The third room served as a prison for those servicemen who were considered the «most

dangerous».

us. The cell had an iron door with window

constantly open and iron bars. Twice a day they brought porridge. The ration of a person amounted to an ordinary cup used

to scoop some food. Twice a day we were

taken out to the toilet. At that time, we

were able to fill bottles with tap water...»

The second room was used to accommodate civil, military, and representatives of the self-proclaimed republics arrested for committing any violations.

«...We were thrust into the so-called «pit». I was accommodated in the cell no. 4. The cell was partitioned into two parts. There was a food container to store plastic dishes. There were wooden pallets on both sides of the room, where prisoners slept. There was no adequate ventilation in the room. It was turned on for an hour in the morning and in the evening. The light in the cell was never turned off. We had no idea of whether it was day or night, when we were in the cell. The humidity was high in the cell and the sweat was running off

«...Then we were accommodated in the basement of the SBU building. It used to be a bomb shelter. There were three quasi living rooms. The total number of rooms was six plus two sanitary facilities and two rooms for a system of ventilation and generators that were in no working order. The rooms, in which we stayed, were equipped with dilapidated two-story «bunk beds», where we slept on wooden boards. There were only 12 or 14 «bunk beds», so not all of us fit in. We slept by 2-3 people on each one or 5-7 people in a sitting position. Sometimes, some prisoners did not sleep at all for several days, while others slept on the floor ...»



In addition to constant psychological pressure exerted on POWs, their detention conditions did not allow to recuperate.

«...In the cell, where we were detained, there were window grilles, and instead of glass — a wooden board, so it was always very cold. There were two soldier beds with the passage between them about 60 cm. The room was not more than 3-3.5 meters long. No water supply and toilet. The light was turned on all days long ...»

«...At first I was kept in the basement (about a week), where there was a concrete floor, on which we slept without any kind of extra blankets, mats, etc. The room was about 20 square meters large. There were 7 of us. Then we were moved to a very small room (so-called arms room), we made ca. 40 people there. It was the usual, standard arms room; there is such in every barrack. The windows and doors had metal bars. The conditions were appalling — a toilet looked like cans and buckets that were always there and were emptied only when they were full...»

«...in the two-bed cell there were eight of us: two slept on bunk beds, others on the floor. We slept in shirts and trousers, as we had nothing more. Water was provided three times a day. Once per day, we were taken out for 10 minutes into the courtyard of the temporary detention center...»

As punishment of POWs and their humiliation, they could be held in cages.

«... After that, we were brought in the courtyard and put in a large dog crate, where we were given water. There were already Ukrainian POWs in the cell. At that time, we heard terrorists' conversations. According to our understanding, somebody among the seniors was giving orders to shoot us. We waited for that moment and tried to get mentally prepared. However, a fighter who had previously ordered to shoot us came up to our cell and said that the execution was postponed and would take place in two hours...»

«...Having heard nothing during the questioning, I was taken to a dog cage that stood outside. I spent 5 days there with an internally displaced guy from Crimea. At times I was beaten with a stick in the cage or awaken with stun gun put to my head at night when I was sleeping...»

Nutrition of POWs provided and controlled by the opposing side was enough just about to maintain prisoners alive. In some cases, the provision of food was used as a way of abusing prisoners.

«...They fed us once a day: a ladleful of soup or liquid porridge, ca. 200 grams, and a piece of bread ...»

«...They fed us with cereals of spoiled grains. There was a half-full 28-liter pot for 111 people. The porridge looked like one solid thick mass. We asked to add some water, to which they answered that «ukrops» had cut off the water supply, though we knew that there was water in the premises. They spat and blew their noses into the porridge, but we had something to eat, as that porridge was not enough (3-4 tablespoons per person). Some could not eat that food due to physiological reasons. The guys who carried the pot tried to remove at least the remains of secretion at the top so that it was not so disgusting to eat. Sometimes, they added some fuel (diesel) in food. Bread was given at the rate of one loaf for 12 people ...»

«... They fed us twice a day, but always with some leftovers (food was not fresh with obvious signs that someone had already eaten it). They provided drinking water, but in very limited quantities ...» Sanitary conditions were also unsatisfactory.

«...We did not have adequate hygiene products. Somewhere in October, we could get one piece of soap for everyone. No toothbrushes. For the first time we received toothbrushes only in individual parcels. Only on 10.10.2014, when we received a large parcel for all prisoners there was a toothbrush for each. There was no possibility to easily take a shower. If we were taken outside — it was very rare (once a fortnight). We were brought several floors up in the building to the room, where there was a sink and a bath. There was only cold tap water. At first, they did not even give us a soap, but then started to give some...»

Upon analysing the overall situation with the attitude of representatives of the self-proclaimed republics to POWs (based on appeals to our organisation and relevant pieces of evidence), the following conclusions could be drawn:

- » in most places of detention, the opposing side treated POWs with cruelty especially in the period from summer 2014 to summer 2015. That period is characterised by the most severe beatings and the largest number of detained persons;
- » the greatest pressure was exerted by the illegal armed groups on POWs mainly in the first few months of captivity. It was at



that time when prisoners experienced the greatest pressure, mainly physical. Later psychological abuse becomes more systematic;

» at present it is quite difficult to assess the full picture of events in all places of detention. There is no available general complete database of identified places where POWs have been detained. It should be noted that there is no complete and accurate information on the detention of POWs by small groups of the self-proclaimed republics. Therefore, the total number of persons missing during the conflict is likely to include some persons being held captive.

The evidence of people who survived captivity can be used to show dreadful picture of events that occur in places of detention. On the other hand, having analysed the evidence, gross violations of international humanitarian law by the militia and disregard for fundamental human rights have become blatently obvious⁵³. There is a so-called «law enforcement» system in the self-proclaimed republics, criminal proceedings as to ill-treatment of POWs are being opened, however, the value and effectiveness of such investigations remain doubtful. The Russian Federation, as a state responsible for the actions of the self-proclaimed republics⁵⁴, also refuses take any action to punish those guilty of human rights violations in the East of Ukraine.

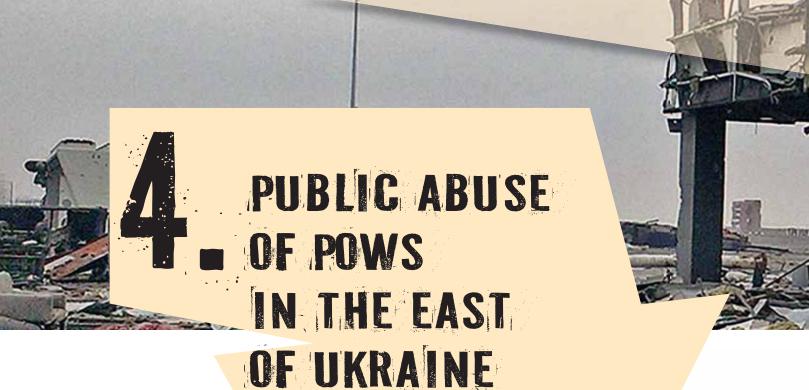
Practically any actions of representatives of the self-proclaimed republics towards POWs are aimed at their humiliation. Questioning and psychological pressure are applied to oppress a person mentally. Physical violence and torture inflicted on a person represent a complete disregard for a person and a strong desire for revenge.

Inhuman cruelty and cynicism regarding POWs illustrate complete disregard for human life, which occasionally resulted in extrajudicial killings of POWs.

53 Article 13 «Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention». Geneva Convention relative to the Treatment of Prisoners of War of 1949// [electronic source]: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/52 d68d14de6160e0c12563da005fdb1b/6fef854a3517b75ac 125641e004a9e68?openDocument Article 14 «Prisoners of war are entitled in all circumstances to respect for their persons and their honour», Geneva Convention relative to the Treatment of Prisoners of War of 1949// [electronic source]: https://ihl-databases.icrc.org/applic/ ihl/ihl.nsf/52d68d14de6160e0c12563da005fdb1b/6f ef854a3517b75ac125641e004a9e68?openDocument Article 49 « The Detaining Power may utilize the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health», Geneva Convention relative to the Treatment of Prisoners of War of 1949// [electronic source]: https://ihl-databases.icrc.org/applic/ ihl/ihl.nsf/52d68d14de6160e0c12563da005fdb1b/6f ef854a3517b75ac125641e004a9e68?openDocument Article 3 «Prohibiyion of torture', Article 4 «Prohibition of slavery and forced labour», Article 5 «Right to liberty and security», Article 8 «Right to respect for private and family life», Convention for the Protection of Human Rights and Fundamental Freedoms, of 1950 // [electronic source]: http://www.echr.coe.int/Documents/ Convention_ENG.pdf

54 Case of Ilascu and Others v. Moldova and Russia, appl. no. 48787/99, judgement 08.07.2004 // [electronic source]: http://hudoc.echr.coe.int/eng?i=00161886&utm_source=www.russianpulse.ru&utm_medium=link&utm_compaign=article#{«item id»:[«001-61886»]}.





ideos of the Russian media are used in addition to calls as confirmation of a person's being detained. Such channels as Russia-1, Pervyj (The First), NTV, Russia-24, LifeNews regularly show recorded in Donetsk and Luhansk oblasts of Ukraine videos during the conflict in Eastern Ukraine. They have free regular access to the bases of insurgents and places of detention of POWs. The purpose of each video shown by the Russian channe is to show the cruelty of the Ukrainian military during the hostilities:

» the Ukrainian military are called «punishers», «fascists», «ukrops», «killers of civilian population». These expressions are strategic in all stories that focus on the conflict;

EXAMPLE:

«...I was brought to the lobby of the hotel. There were many guards with assault rifles. We entered the room where there were 40-50 reporters from different Russian channels and channels of the DPR. For example, Life News. Prior to the

press conference, they took me to a ruined dentist's house for filming. The purpose of the press conference was to make me say that our troops shelled the civilians. Over the course of it, I said they shelled, but did not specify whose troops did that. At the conference, they said that I was temporarily visiting them and promised the reporters to release me within a week...»

«...During my stay in Ilovaysk, I gave many interviews to Russian TV channels. They chose 5 people who were brought to the first building that was destroyed and ordered to do certain actions near it. It was filmed in the way, «as if punishers were reconstructing the city bombed out by themselves»...»

» every footage is staged. POW's words are controlled. The expression of serviceman's own position can cause the infliction of physical violence on him by representatives of the self-proclaimed republics.





EXAMPLE:

«...The work had lasted about four hours, in the presence of journalists and operators with television cameras. It was mentally and physically hard to work. We were given a loaf of bread and said, «Look, you have worked for a piece of bread.» The terrorists in the presence of journalists with cameras forced us to address the Ukrainian authorities and condemn the war, the actions of the Armed Forces of Ukraine, demand to stop the socalled «killings of the civilians», «shelling of civilian towns» and more. I refused to talk on camera, and then one of the militiamen grabbed me, pressed against the wall, asked if I still believed in my country, reloaded an assault rifle and fired. The bullet flew over my ear. After that incident, journalists stopped filming, gathered equipment and left the place ...»

«...They constantly brought journalists of the Russian TV channels, in particular, LifeNews. Prior to the interview, they told us what they wanted to hear from us. The guards also threatened to put on a gas mask, a bag over our heads, if we did not say what they required. They also said that those who would agree to be interviewed, would be exchanged among the first ...» «...According to the logos of the journalists' and operators' equipment, we realized that they were representatives of the Russian federal TV channels of the VGTRK (All-Russia State Television and Radio Broadcasting Company) - Russia 1 and Russia 24. The video was filmed for the news program «Vesti». While communicating with the journalists, we were constantly controlled by the armed terrorists of the LPR. We were instructed beforehand that we could talk. There was no pressure as to the need to give an interview. However, almost everyone wanted to speak to camera, say a few words, and give hope to the relatives and friends that he was alive. Nevertheless, some did not want to speak on camera. For example, I did not want to talk to reporters. The guys who participated in the filming, were forced to say that they were held in those premises and that they were satisfied with conditions of detention. The filmed video was broadcasted on 21.05.2015 on the Russian television channels of the VGTRK network: Russia 1, Russia 24 and the local TV channels of this company (for example, DTRK LPR (State Television and Radio Broadcasting Company of the LPR) and others controlled by the Russian authorities) ...»



The most cynical and cruel in relation of POWs were so-called «parades of the POWs» held by the insurgents in Donetsk on 24.08.2014 and 22.01.2015. The video filmed by the Russian journalists during those «parades» was shown in the news. The participation in the demonstrations held by the illegal armed groups became one of the forms of moral humiliation for POWs.

The purpose of the «parade of POWs on 24.08.2014» was the association with the Parade of the Defeated held on 17.07.1944 in Moscow. During the Second World War, the organised German POWs march became an instrument of Soviet propaganda: it contrasted the «parade of winners», the conduct of which was declared by the German propaganda after establishing control over the capital of the USSR. At 11 a.m., 57 600 people, among which there were more than a thousand officers and 18 generals, had to move off. The report on the parade of the vanquished drawn up for Stalin tells that «when the columns of POWs were passing by, there were many enthusiastic exclamations and greetings of the population in honor of the Red Army, our Commander in Chief, as well as in honor of generals and officers of the Red Army. There were many anti-fascist exclamations: «Death to Hitler!», «Death to fascism!», «Why weren't you killed on the front line?» etc. Street sprinklers followed the columns, which were also part of the propaganda, as if they washed traces of fascism away. To maintain the overall effect of propaganda, in a month the parade of the POWs took place in Kyiv, where 36 918 German prisoners marched⁵⁵.

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The proven method
of image of the hu

The proven method of propaganda – creation of image of the humiliated military of the opposing side — was also used by the representatives of the self-proclaimed republics on

24.08.2014. To participate in the "parade" there were selected mainly officers of the Armed Forces of Ukraine. In general, ca. 50 hostages were involved in the "parade". As in 1944, the POWs broke into column; they were convoyed; the locals shouted and cursed them; in addition, eggs, cans, bottles were thrown at the prisoners; behind them, the sprinklers washed the street. The organised event was held for the benefit of the Russian

EXAMPLE:

«...On August 24, 2014, I together with other POWs was brought to the so-called «parade of POWs». We were woken up at 4 in the morning. At 5 o'clock, everybody was gathered and taken to the canteen meant for terrorists. We were not limited in food; it was allowed to take everything. However, our body couldn't bear such a sudden change, as it was worn out by food we had.

The officers were put in front of the column, and the soldiers were behind them. There was a group of journalists. The locals joined them. Some women with children came up to us and said, «Look, what future you create for our children.» The civilians were gathered in advance. In total, there were about a thousand of them; while the column was moving forward, the locals followed them to make an impression of mass assembly.

Farade of the defeated // [electronic source]: http://www.istpravda.ru/pictures/9675/.

The column of the servicemen was convoyed by seven armed women in camouflage with dogs of fighting breeds. They were distributed throughout the whole column. One headed the column, and the other six were evenly distributed on both sides.

People threw everything possible at the column: eggs, tomatoes, stones, bottles made of glass and plastic and more. They also cried «fascists», «murderers», «Bandera followers», «American slaves», etc. At that time, the movement of the column was commented over the loudspeaker...»

TV channels who eagerly covered it.

The second «Parade of POWs» was held in Donetsk on 22.01.2015. Contrary to the first «demonstration», the second parade had to show repentance of the Ukrainian military for the crimes allegedly committed against civilians. The defenders of the Donetsk airport were involved in the «Parade», who the day before had been captured by militiamen after a powerful explosion in the new terminal of the International airport «Donetsk» named after S. Prokofiev. They were introduced as perpetrators of the attacks in Donetsk. The «Parade» was held at three sites in the city: the railway station, the square of Baku Commissars, the public transport stop in the Leninsky district of the city, where the day before there was an explosion. The POWs were forced to put coffins of the victims into the Ural truck, to kneel and apologize to the residents. They heard angry shouts and curses uttered by the crowd. In total, the 18 POWs were engaged in the «Parade», who were severely beaten, injured after the explosion on 21.01.2015.

EXAMPLE:

«...On 22.01.2015, the day after detaining us and after endured torture, the terrorists of the DPR woke us around 7 o'clock in the morning, accompanied us to the toilet, fed, and made almost everyone who was in our cell get in the Ural truck and drove us to the city. To our question of where we were going, the terrorists said that we would see soon, and that we would see what we had done. We were brought to an unknown street, where O. Zakharchenko, priests and Russian journalists, including those from Life News were waiting for us. There we saw the coffins, pointing to which Zakharchenko said that those were bodies of the Ukrainian soldiers, and we had to put them in the vehicle of the representatives of the Ukrainian side, who were present at loading. Despite my broken ribs, the pain in my hand tortured with iron and the pain all over the body, the terrorists of the DPR forced me to load coffins.

None of the prisoners dared to refuse, since the armed terrorists convoyed us



everywhere. The Russian journalists filmed the whole process of loading. During it, the journalists tried to interview us, asked provocative questions; O. Zakharchenko «sought publicity» among the Russian journalists accusing the «Armed Forces» of military and civilian deaths. It was unpleasant and humiliating for me, as well as for all other prisoners, to stand in front of cameras and answer journalists' provocative questions. We were kept for 30-60 minutes at that place.

Then we were put back into the vehicle and drove to another street, near some market. There we were dropped off, broken down into column by twos and ordered to go 200-300 meters down the street. During our getting out of the vehicle and marching, the locals ran up to us, beat us with hands, bags, kicked and threw various things at us (snowballs, bottles, stones). The locals were very angry, accusing us of shelling Donetsk, death of local population. At that time, we were angry with people of Donetsk, because we could not explain and prove that while being at Donetsk airport, we could not physically fire at Donetsk, that the terrorists of the DPR mislead them.

After marching about 200 — 300 meters, we were put back into the vehicle and

brought to another street with a rotary. There we were dropped off and forced to make one round along the beds arranged in circle (rotary). At that place, the Russian journalists also filmed us, there were the enraged people who cursed us in front of cameras, ran up and beat us. Someone from the locals ripped my silver chain with a crucifix off my neck. The crucifix was lost and one of the terrorists picked up the silver chain and gave it to me.

Then, we were put into the vehicle again and taken to Bosse Street, where a shell struck the public transport stop that day causing death of local population. Russian journalists and angry locals were also waiting for us there. O. Zakharchenko stopped us at the stop, where people died, and accused us of their death in public. At that moment, someone from the crowd shouted and demanded to kneel. O. Zakharchenko immediately supported that suggestion and forced all POWs to kneel and apologize to the population of Donbass. While we were kneeling (for 2-3 minutes), the locals were throwing eggs, snowballs, bottles, stones and other things; people were cursing us. We, the POWs, were disgusted with all we saw and heard. They kept us 30 minutes in Bosse Street...»



These events have caused indignation among human rights organisations and lawyers. David Glazier from Loyola Law School, Michael Shaft, an expert in military law of the Case Western Reserve University School of Law, the International Committee of the Red Cross noted that the classification of these events as violations of international humanitarian law depends directly on the legal classification of the conflict in the East of Ukraine. «If it is an international armed conflict, then this amounts to unambiguous... violation of the provisions of the Geneva Conventions, Glazier says about the POWs march. — The problem is that when it is not an international armed conflict, then to determine the actual «offence against human dignity» is much more difficult. It is difficult to clearly state that the violation has reached that level.» Rachel Denber, Deputy Director of the Europe and Central Asia Division Human Rights Watch, wrote on Twitter that the event falls under article 3 of the Geneva Conventions⁵⁶.

IHL is only applicable during periods of armed conflict. Human rights law, however, is applicable in all other circumstances besides armed conflict and, for certain actions (such forced labour and torture) during armed conflict as well. This expansive scope of human rights law has arguably affected the development of IHL, advancing the notion that all people are «entitled to the enjoyment of human rights, whether in time of peace or war.» Whereas IHL permits and even presumes harm done to individuals under certain circumstances, human rights law prohibits assaults on the dignity and security of individuals under virtually all circumstances⁵⁷. In the case of Ireland against the United Kingdom, the European Court of Human Rights defined a degrading treatment as abuse, which shall arouse in victims feelings of fear, pain and inferiority and to infringe their dignity and,

if possible, to break their physical and moral resistance⁵⁸. Furthermore, the Court determined that the public nature of the treatment could be an aggravating factor. However, the determination of the fact of inhuman treatment shall take into account tat victims of inhuman treatment can be humiliated even not in the eyes of others, but in their own eyes⁵⁹.

It should be emphasized that in a situation of "Parades of POWs", the key factor is conditions of dependence of POWs on detaining persons. POWs are in a vulnerable position, are exposed to threats to their lives, that is why they are not given a possibility to choose a behavior pattern in the above situation. Their vulnerability has been used for propaganda purposes. Personal attitude of POWs to the events that happened to them, their perception of a situation as it was, which caused immense mental suffering is of paramount importance for assessing the threshold of this violation in the context of human rights law.

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⁵⁹ Case of Riad and Idiab v. Belgium, appl. no. 29787/03; 29810/03, judgement 24.04.2008, § 95. // [electronic source]: http://hudoc.echr. coe.int/eng#{«appno»:[«29787/03»],»item id»:[«001-108395»]}.



⁵⁶ Is «Parade of prisoners» in Donetsk a war crime? // [electronic source]: http://www. radiosvoboda.org/content/article/26549472.html.

⁵⁷ Human Rights in Armed Conflict/ Reuben E. Brigety II// Conflict and Human Security: A Search for New Approaches of Peace-building (2004) // [electronic source]: http://home. hiroshima-u.ac.jp/heiwa/Pub/E19/chap6.pdf.

⁵⁸ Case of Ireland v. the United Kingdom, appl. no. 5310/71, judgement 18.01.1978.

5 FORCED LABOR OF POWS DURING CONFLICT IN THE EAST OF UKRAINE

s a general rule, defined by the Geneva Convention relative to the Treatment of Prisoners of War, , it is allowed to utilie the labour of POWs who are physically fit, with a view particularly to maintaining them in a good state of physical and mental health, taking into account their age, sex, rank and physical aptitude . When performing work POWs should be provided with appropriate working conditions and the requirements for safety should be met. POWs should be granted adequate means of personal protection according to the nature of work.

It is strictly forbidden to forcibly employ POWs for labour:

- » which is of an unhealthy or dangerous nature, unless a POW is a volunteer;
- » which would be looked upon as humiliating for a member of the armed forces.
- » implying the removal of mines or similar devices⁶¹.

Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that no one shall be held in slavery or servitude; no one shall be required to perform forced or compulsory labour⁶². In the judgement on the case Siliadin v. France the European Court of Human Rights found that

- 61 Geneva Convention relative to the Treatment of Prisoners of War of 1949 // [electronic source]: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/52 d68d14de6160e0c12563da005fdb1b/6fef854a35 17b75ac125641e004a9e68?openDocument
- 62 Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950 p. // [electronic source]: http://www.echr.coe.int/ Documents/Convention_ENG.pdf
- Gase of Siliadin v. France, appl. no. 73316/01, judgement 26.10.2005, § 123. // [electronic source]: http://hudoc.echr.coe.int/eng?i=001-69891#{«itemid»:[«001-69891»]}.
- 64 Case of Van der Mussele v. Belgium, appl. no. 8990/80, judgement 23.11.1983, § 32. // [Електронний ресурс]: http://hudoc.echr.coe.int/ eng?i=001-57591#{«itemid»:[«001-57591»]}/





«servitude» is a particularly serious form of denial of freedom. It includes «in addition to the obligation to provide certain services to others, commitment slave work for the benefit of another person and the inability to change its position⁶³. In the case of *Van der Mussele v. Belgium* the Court addressed the International Labour Organisation Convention No.29 on forced or compulsory labor. For the purposes of this Convention, the term «forced or compulsory labor» means any work or service demanded from any person under the threat of a punishment, for the performance of which a person has not offered himself voluntarily⁶⁴.

The testimony of victims in the conflict in Eastern Ukraine points to widespread prevalence of forcing POWs to labour. On the one hand, the aim of forced labour is to use prisoners as manpower for such categories of labour that is not performed by representatives of the self-proclaimed republics. Another purpose is moral humiliation of detained persons and exercising psychological pressure over them.

The prisoners are involved in different types of work. Starting with cleaning-up activities, garbage collection, and ending with heavy repairing works.

EXAMPLE:

«... People were selected to work according to the principle of «who could do this». The teams of 3 to 10 people were formed for construction of various projects. Thus, the mayor applied for restoration of administrative buildings, budget organiszations, such as kindergartens and schools. Citizens were filing applications for renewal of their apartments and houses. Applications were passed to the commandant and he distributed people into the teams. Personally I and my team have been restoring the 5-storey building, destroyed with a direct hit from a tank. The first two floors were livable, and the rest were burned and uninhabitable. Our task was to wall up the windows and holes so that snow and water did not get inside. Several times we were taken for the roofing over, but basically we did this job...»

«... I performed the work associated with the restoration of infrastructure in the city after the military operations. For example, garbage collection, renovation of buildings, demolition of bricks of the destroyed buildings, glassing of windows, roofing over and other works...»



«... At first, as a «pravosek», I was not taken to work outside the building. I was forced to carry bags of sand and lay them on the basement windows. Thus, the insurgents protected their living rooms from possible shrapnel. We also carried heavy woodblocks and laid them on the windows. One woodblock had to be carried by two people. Once a group of 6 people, including me, was brought to the warehouses. They were locked. Insurgents simply plundered these warehouses. We loaded the items which were still suitable for use in the cars. All items were brought to the administration building, where we unloaded them...»

High demand was created for the prisoner labor. The local commandant declared the acceptance of applications from the locals for works of various kinds. Further, prisoners were distributed according to needs on various sites.

EXAMPLE:

«...We were sometimes taken to work by locals, leaders of some enterprises. They approached the commandant «Security service of DPR», asked for a definite number of people, left written undertakings to return the prisoners to «Security service of DPR» in the same amount, without beating and

alive. Then the commandant gave the task to our senior in the cell, who was assigned by the terrorists themselves, to distribute the people for certain kinds of work...»

«...I was locked up every night in a small room, given the computers that had to be repaired. As I was told by the guys, in the city there was an announcement «Repair of computers. Cheap service» and in all likelihood, it was me who repaired them...»

In addition, POWs were involved in dangerous work.

EXAMPLE:

«... We were often taken for the exhumation. We were digging out all burial grounds and sanitary burials. Several times we were taken to half-solemn burials. Insurgents pulled out bodies of their fighters from temporary graves and reburied them in graves that we had dug...»

«...We performed different kinds of tasks. For example, clearing the debris of the artillery supply depot destroyed by an explosion. The work both was hard physically because of the weakness of our bodies after a long captivity and constant



humiliation, and life-threatening as we carried damaged but not exploded shells for recycling. I was involved with this work only once. In total a group of 10 people was used for this task 3 times. The hardest work for me was the burial of dead bodies of local residents who fought on the side of the «DPR». Relatives of the deceased were usually deeply stressed, and of course being nearby I was accused of everything. Quite often performing such work was life-threatening, due to the threats of revenge from the relatives...»

«... At the end of February 2015, terrorists started to bring us out to Donetsk airport to clear the debris and to pull out dead bodies. So, we were taken early in the morning, after breakfast and brought to the airport. There we were given only rubber gloves and were forced to dismantle the rubble and search for victims. On the first day of work one of the terrorists was filming us. During next days, when we started to get outcorpses, to the airport there came representatives of the «Red Cross» and the OSCE, and there were many journalists from the «DPR» and «Russia». We were working till the nightfall...»

The representatives of the opposite side were also forcing POWs to perform works of various kinds as a reward for their food and maintenance.

EXAMPLE:

«... All the time the terrorists forced the prisoners to work off food that was given to us. We have worked in food warehouses, unloading trucks with products. We worked from 8-9 am until dawn each day. A man was accompanying us at work (unarmed), he brought us to the warehouse and afterwards brought us back. Everybody was working, even the locals were working with us, some unloading the cars, some clearing up after the explosion...»

According to some testimonies it can be concluded that the works were not restricted to any hours.

EXAMPLE:

«...There weren't any schedules; we were taken to work whenever they needed us, not depending on the time of day. We were brought back after having finished the work. On average, each detainee was working every day for 3-5 hours...»

«... Our schedule was as follows: at 6 am was the wakeup and at 8 am we were taken out to work. As they told us, «to restore the city ruined by us». It was impossible to prove them the opposite, as the dispute with an armed man could be life-threatening. However, we knew that, when we were there, the city was under fire from the part occupied by the Russian military...»

«...we were taken out to work every day, without any rest and days off. With increasing daylight hours, our work increased. In the summer we worked almost all night. When we were returned to the cells, we couldn't even talk to each other, because we went to bed immediately, as we were exhausted...»

UKRAINIAN HELSINKI HUMAN RIGHTS UNION Prisoners depended on those guards under control of which they stayed. Sometimes the state of a detained person depended directly on the demands of the guard.

EXAMPLE:

«...На наступний день ми працювали на присадибній ділянці одного з охоронців— «ополченців», перекопуючи йому город. Працювати через занепад сил було важко. Крім цього, господар ділянки разом з товаришем сильно напилися і не контролювали свої дії. Вони, ледь тримаючись на ногах, з наявної у них зброї почали стріляти в різні боки, в тому числі цілились по нас (так як в якийсь момент їм здалося, що ми тікаємо). На щастя, попасти в кого-то з нас їм не вдалося...»

Each unit or grouping of the self-proclaimed republics has a different attitude to the prisoners, particularly in terms of their involvement in forced labor. In most cases, people are forced to carry out repair works or to clean up the area. Witnesses confirmed the involvement of prisoners to perform life-threatening work directly prohibited by international humanitarian law⁶⁵.

Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.// Article 52 of the Geneva Convention relative to the Treatment of Prisoners of War of 1949// [electronic source]: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/52d68d14de61 60e0c12563da005fdb1b/6fef854a3517b75ac12564 1e004a9e68?openDocument

PROSECUTION OF PRISONERS ON THE TERRITORY OF SELF-PROCLAIMED REPUBLICS

he rules of the Geneva Convention relative to the Treatment of Prisoners of War determines that a POW is subject to the laws, statutes and orders in force in the armed forces of the state, which holds a POW in captivity. Violation of these regulations by a POW may cause disciplinary or judicial sanctions, yet their use should be the principle of indulgence⁶⁶. Передбачається також і судове переслідування спеціалізованим військовим судом за діяння, вчинені військовополоненим до взяття в полон.

Prosecution by the specialized military court for acts committed by POWs before captivity is also envisaged.

The internal system of the self-proclaimed republics has its own law enforcement agencies which are engaged in prosecution of POWs. On the one hand, since «DPR» and «LPR» are not recognized by the international community as subjects of international law,

recognition or enforcement of the decisions of the judicial system of these entities is out of question. On the other hand, virtually there is no opportunity to influence the actions concerning prisoners held in detention centers of the self-proclaimed republics and against whom criminal cases are opened. For these people the only option for release is prisoner exchange.

The most famous specialized place of detention of prisoners is the Detention Facility No 5 in Donetsk. Both civilians and military are kept there, albeit on different charges. Civilians are detained on suspicion of espionage in favor of Ukraine's security bodies and illegal possession of weapons.

Geneva Convention relative to the Treatment of Prisoners of War of 1949// [electronic source]: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/52d6 8d14de6160e0c12563da005fdb1b/6fef854a3517b7 5ac125641e004a9e68?openDocument



EXAMPLE:

«... I was accused of having committed the act to the detriment of the sovereignty and territorial integrity, inviolability, defensive capability, and information security of the «Luhansk People's Republic»...»

The accusations of a different nature are made against Ukrainian military who are in captivity.

EXAMPLE:

«...In April 2015, the terrorists came into the cell to tell me that «you are charged with offence under Part 2 of Art. 236 of the Criminal Code of «DPR» on the basis of Criminal Code of the USSSR of 1960, i.e. participation in punitive battalions, organized gangs and so on». Under this Article I was threatened with up to 10 years imprisonment, according to the first part, and according to the second one, to 20 years. And additionally I was accused of having participated in the punitive operations against civilian population of the »DPR». Thus they told me, «so, we are going to execute you». They put me in a temporary detention center where I remained for 24 hours. Then I was moved to Donetsk detention facility...»

«... I was put to a security cell. Moreover, my chest was broken, I had been hit on the had (hematoma on the back of my head was the size of a jar). I was beaten by the former Ukrainian officers who remained to work in the detention facility No. 5 in Donetsk. I asked what I am beaten up for. They replied that because I was an «ukrop». They didn't remove their shoulder straps and said that they were already malorosy (Little Russians). The charges were the same — «Violation of the rules of war.» I wasn't taken to the court, though my detention continued...»

The legal basis for prosecution in the self-proclaimed «DPR» is the Criminal Code of the republic which is based on the provisions of the Criminal Code of the USSR of 1960. The similar situation is in the self-proclaimed «LPR». Article 24 of the Code specifies that the death penalty — shooting – is permitted as an exceptional measure, to its complete abolition, for especially grave crimes in cases specifically provided for in the special part of the Code⁶⁷.

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⁶⁷ The Criminal Code of the USSR of 28.12.1960. Ceased to be in force and effect on 01.09.2001 // [electronic source]: http://zakon0.rada.gov.ua/ laws/show/2001-05.

Abolition of the death penalty was the greatest manifestation of humanity in other countries of the world. For example, under Article 1 of Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty of 04.28.1983, the death penalty is abolished. No one shall be condemned to such penalty or executed⁶⁸.

In February 2016, the media reported that in the «DPR» the first sentence was passed upon a Ukrainian soldier. He was sentenced to thirty years of strict regime and two years of restriction of freedom. Relatives of the prisoner could not get to the court because the trial was postponed at the last moment. The prosecutor of the «DPR» required the use of capital punishment – execution by shooting⁶⁹.

Also, the so-called «ombudsman of the DPR» Darya Morozova claimed that «Prosecutor's Office of the DPR» investigates criminal cases against Ukrainian POWs. According to her, charges are brought against almost all Ukrainian prisoners\detainees. At the same time Ms. Morozova states that the allegedly convicted men could be transferred to the Ukrainian side in the framework of exchange after «the sentence» is passed⁷⁰. It seems their intention is to act under the Convention on the Transfer of Sentenced Persons (1983), making it look like they are the legal state acting in accordance with relevant legal principles, but this only adds to absurdity because the prosecution and subsequent conviction contradicts all existing rules of law.

The European Court of Human Rights states that «legitimacy» is determined by the fact whether the «procedure established by law» is observed⁷¹. This means that detention must meet national standards and, as appropriate, the international law⁷². The recognition of

the validity of the judgements delivered by the judiciary of the self-proclaimed republics against foreign citizens depends on the recognition of the sovereignty of the state internationally. In this case, the formation may act as an independent subject of international law, join international organizations and eneter into international agreements. Otherwise, the judgments of the judicial authorities of the self-proclaimed republics against foreign citizens are considered illegitimate.

- 68 Protocol no. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, of 28.04.1983 // [electronic source]: http://www. echr.coe.int/Documents/Convention_ENG.pdf
- 69 In «DPR» Ukrainain POWs are at risk of shooting // [electronic source]: http://www.novayagazeta.ru/ politics/71744.html.
- 70 Ukrainian prisoners of war can be «sentenced» to shooting — terrorist «Ombudsperson of the DPR» Morozova // [electronic source]: http://nabat. in.ua/novosti/ukrainskie-voennoplennye-mogutbyt-prigovoreny-k-rasstrelu-terroristicheskijombudsmen-dnr-morozova/.
- Norm of the Criminal Procedural code shall be considered regarding Ukraine.
- 72 Case of Medvedyev and others v. France, appl. no. 3394/03, judgement 29.03.2010. // [electronic source]: http://hudoc.echr.coe.int/eng?i=001-97979#{«itemid»:[«001-97979»]}.

INVESTIGATION BY UKRAINE OF CRIMINAL OFFENSES COMMITTED IN THE ATO ZONE

kraine is equally responsible in respect of an effective investigation. According to Article 1 of the Convention on Human Rights and Fundamental Freedoms, Ukraine as a State Party to the Convention should be responsible for any violation of the rights and freedoms of individuals under its jurisdiction. In the decision Ilascu v. Moldova and Russia⁷³ European Court of Human Rights found that the words «within their jurisdiction» should be understood primarily as territorial. This presumption may be limited in exceptional circumstances, particularly where a State is prevented from exercising its authority in part of its territory. In order to be able to conclude that such an exceptional situation exists, the Court must examine on the one hand all the objective facts capable of limiting the effective exercise of a State's authority over its territory, and on the other the State's own conduct.

The European Court of Human Rights has identified minimum performance standards for investigating allegations of abuse, which include requirements that the investigation must be thorough, independent, impartial and controlled by the public, as well as the competent authorities must act with exemplary diligence and promptness⁷⁴. The principles adopted by the Court in its decisions also can be seen in the provisions of the UNHR Resolution on the Effective Investigation against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁷⁵. The following tasks are defined for the investigation: establishing the facts relating to cases of torture, identifying those who have the responsibility for such cases and facilitating their prosecution⁷⁶. It is noted that the state should provide prompt and effective investigation of complaints and reports of torture and ill-treatment⁷⁷.

In order to fully analyse the position on the victims of the conflict, one should consider the implications of the situation in terms of bringing to justice those responsible for terrorist activities. Criminal prosecution of persons suspected of terrorist activities is carried out by the state in which a terrorist attack was

- 73 Case of Ilascu and Others v. Moldova and Russia, appl. no. 48787/99, judgement 08.07.2004 // [electronic source]: http://hudoc.echr.coe.int/eng?i=00161886&utm_ source=www.russianpulse.ru&utm_medium=link&utm_com paign=article#{«itemid»:[«001-61886»]}.
- 74 Case of Aleksakhin v. Ukraine, appl. no. 31939/06, judgement 19.10.2012, § 55. // [electronic source]: http://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22 31939/06%22],%22documentcollectionid2%22:[%22 GRANDCHAMBER%22,%22CHAMBER%22],%22item id%22:[%22001-112277%22]}



commited⁷⁸. In particular, according to Article 1 of the European Convention on Extradition, of December 13, 1957 (ratified by Ukraine on January 16, 1998) the Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order⁷⁹. European Convention on the Suppression of Terrorism of January 27, 1977 (ratified by Ukraine on January 17, 2002) regulates the extradition to the requesting State of persons persecuted for committing terrorist acts⁸⁰. These provisions should be applied in relation with the sovereign states regarding extradition of terrorists who are on their territory. As for the self-proclaimed republics, their so-called laws are out of scope of these international instruments.

The Investigation office of the Department on Investigation of Crimes against National Security of Ukraine, Peace, Human Security and International Law of the Main Military Prosecutor's Office of the Prosecutor General of Ukraine carries out the pre-trial investigation of the facts of ill-treatment of civilians and captured participants of the anti-terrorist operation that implies any torture, abuse and forced labor. The above mentioned crimes are committed in the temporarily occupied territory of Donetsk and Luhansk oblasts by members of the terrorist organizations «DPR» and «LPR» and illegal armed groups active within them.

Legal qualification of the committed acts is carried out in accordance with the following articles of the Criminal Code of Ukraine: Part 1 and Part 2 of Art. 438 (violation of the laws and customs of war); Para. 1 of Part 2 of Art. 115 (murder of two or more persons); Part 3

of Art. 258 (terrorist attack); Part 1 of Art. 258-3 (creation of a terrorist group or terrorist organisation). Besides, it should also be noted that criminal proceedings are opened by the regional offices of the National Police of Ukraine in respect of facts of detaining people in the Donetsk and Lugansk oblasts, on appeals of relatives of the captured individuals. Criminal offenses are qualified in accordance with Art.147 of the Criminal Code of Ukraine. However, the pre-trial investigation continues even after the person's release, but in fact is ineffective since in most cases the local police investigator does not know how to operate within this procedure. During the conflict no specific recommendations for the conduct of the pre-trial investigation have been designed for the law enforcement authorities. A key argument for the inaction of the pretrial investigation body is the inability

- 75 UN General Assembly Resolution 55/89 of 01.02.2002 // [electronic source]: https://documents-dds-ny.un.org/doc/ UNDOC/GEN/N01/485/00/PDF/N0148500.pdf?OpenElement.
- stanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment // [electronic source]: http://www.ohchr.org/Documents/Publications/ training8Rev1en.pdf.
- Fifective investigation of the facts of abuse: Guidelines on the application of European standards / E. Svanidze — K .: «KIS» — 2009 — 144 p. — P. 125.
- 78 Council of Europe Convention on the Prevention of Terrorism of 16.05.2005 – Art. 15 // [electronic source]: https://www.coe.int/en/web/conventions/full-list/-/ conventions/rms/090000168008371c.
- ⁷⁹ European Convention on Extradition of December 13, 1957 // [electronic source]:. http://www.worldlii.org/int/other/ COETSER/1957/2.html.
- 80 European Convention on the Suppression of Terrorism of January 27, 1977 // [electronic source]: http://www.worldlii. org/int/other/COETSER/1977/1.html.



to access the area where a criminal offence was committed.

Criminal prosecution of perpetrators for terrorist activity is also provided for by the legislation of Ukraine. Part 1 of Art. 23 of the Law of Ukraine «On combating terrorism» of March 20, 2003 stipulates that persons guilty of terrorist activity are brought to criminal liability as prescribed by law81. In addition, Art. 258 of the Criminal Code of Ukraine provides for criminal penalties for an act of terrorism. The article lists of the acts which directly infringe public safety and provides a special purpose of committing a crime related to the ideology of terrorist organisation. For example: intimidation of the population; drawing public attention to certain political, religious or other views of the perpetrator (the terrorist)82.

According to the national law, the article that specifies a penalty for illegal imprisonment and illegal detention of people with physical and psychological violence is Article 147 of the Criminal Code of Ukraine which defines victims as «hostages». This essentially corresponds to the concept of «a person whose liberty has been restricted» in accordance with international humanitarian law during the internal conflict. The peculiarity of this criminal offence is a special purpose which is encouraging the relatives of the detainee, state or other institutions, an enterprise or an organization, a person or an official to commit or refrain from committing any action as a condition for release of the hostages⁸³. Hostage-taking as a part of terrorist activities is covered by composition of an act of terrorism as a crime through an aiming at public safety violations, though it is not directly implied in the article of the Criminal Code of Ukraine.

POWs or civilians as a violation of the laws and customs of war⁸⁴. Art. 438 of the Criminal Code refers to the international legal laws and customs of war, applied in the case of declared war or of any other armed conflict between states (even if one of the States does not recognize the state of war); in all cases of occupation of the whole territory or of a part of the territory of the other state, even if this occupation faced no armed resistance; and in armed conflicts⁸⁵. In addition, this article does not cover crimes committed during a non-international armed conflict. Within its limits, ill-treatment of POWs or civilians can be expressed in the form of staged execution, mutilation, torture, biological experiments, detention, collective or corporal punishment, hard work, desecra-

tion of human dignity and so on⁸⁶.

It should also be noted that the use of a person for forced labor remains unresolved in terms of criminal law qualifications. Art. 438 of the Criminal Code provides for hard labor as one of the aspects of cruel treatment of POWs and separately the coercion of civilians into forced labor⁸⁷. Instead, special provisions of the Criminal Code of Ukraine do not contain an offence which would cover the use of persons for forced labor and could be singled out during a non-international armed conflict. The total ban on the use of forced labor has been set up by the Forced Labour Convention, of 1930, ratified by Ukraine in 195688, However in Ukraine only human trafficking, including for the purpose of exploitation, and exploitation of children was further criminal-

On the other hand, Art. 438 of the Criminal Code provides for liability for ill-treatment of

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⁸¹ Law of Urkaine «On Combatting Terrorism» of 20.03.2003 No. 638-IV // [electronic source]: http://zakon4.rada.gov.ua/laws/show/638-15/parao39#o39.

⁸² The Criminal Code of Urkaine of 05.04.2001 No. 2341-III // [electronic source]: http://zakon0.rada.gov.ua/laws/ show/2341-14/paran1707#n1707.

ized⁸⁹. If we consider current pre-trial investigations, opened by law enforcement authorities of Ukraine after the appeals of persons who have survived detention, the facts of using them for the forced labor are not qualified separately as criminal offences.

So, the concepts of «a hostage» and «a prisoner» are analysed in terms of the criminal law qualifications of committed acts against the victims of the conflict, it is impossible to combine in one criminal proceeding articles of the Criminal Code of Ukraine opposite according to their content. In the general pre-trial investigation, the circumstances of the hostage-taking are considered as act of terrorism and ill-treatment of POWs is considered as a war crime during an international armed conflict. That means that one cannot determine correctness of the use of certain concepts when state authorities can not determine their position for the qualification of the conflict.

In terms of the possibility of bringing the perpetrators to criminal liability, the explanations of each victim of offences recorded within an open criminal proceedings are important. In this respect consideration should be given to the work of the Main Military Prosecutor's Office of the Prosecutor General of Ukraine. Within a single criminal proceeding relating to prisoners, there is an identification of persons who illegally detained POWs, who exercised cruelty and used physical violence on them. The main objective such pre-trial investigation is building a prosecution case against identified persons and their trial which would result in sentencing in absentia.

Notable is the situation where during the pre-trial investigation the fact of a criminal offence committed in Eastern Ukraine by a particular person was established. In fact, the case file of the criminal proceedings allows

the prosecutor to apply to the court with an indictment for a suspect. However, from a legal point of view, the pre-trial investigation stops and any investigative actions other than those aimed at finding a suspect are impossible 90. As a result, there is a situation where the case file points to the guilt of a person and the pre-trial investigation is in «limbo» state due to the physical absence of the suspect, particularly in the territory of Ukraine and the lack of access to him by the law enforcement authorities.

- The Criminal Code of Urkaine of 05.04.2001 No. 2341-III // [electronic source]: http://zakon0.rada.gov.ua/laws/show/2341-14/paran1707#n1707.
- 84 The Criminal Code of Urkaine of 05.04.2001 No. 2341-III // [electronic source]: http://zakon0.rada.gov.ua/laws/ show/2341-14/paran1707#n1707.
- 85 The Criminal Code of Ukraine. Scientific and practical commentary: in 2 vol. / Under total. Ed. V.Y. Tatsyi 5th ed. ext. Kh.: Pravo, 2013 Vol 2 1040 p. P. 986.
- 86 The Criminal Code of Ukraine. Scientific and practical commentary: in 2 vol. / Under total. Ed. V.Y. Tatsyi 5th ed. ext. Kh.: Pravo, 2013 Vol 2 1040 p. P. 986..
- 87 The Criminal Code of Ukraine. Scientific and practical commentary: in 2 vol. / Under total. Ed. V.Y. Tatsyi 5th ed. ext. Kh.: Pravo, 2013 Vol 2 1040 p. P. 987.
- 88 Convention of Forced or compulsory Labour of 28.06.1930 // [electronic source]: http://www.ilo.org/dyn/normlex/en/f?p =NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029.
- 89 Article 149 «Human trafficking or other illegal agreement regarding a person»; Article 150 «Exploitation of children» Criminal Code of Ukraine of 05.04.2001 No. 2341-III // [electronic source]: http://zakon0.rada.gov.ua/laws/ show/2341-14/paran1707#n1707.
- Para.2 Part 1 of Art.280 of the Criminal Code of Ukraine «Pre-trial investigation may be suspended after informing the person suspected if the suspect is hiding from the investigating authorities and the court to evade criminal responsibility and his whereabouts are unknown // [electronic source]: http://zakon3.rada.gov.ua/laws/ show/4651-17/paran2511#n2511.



Law of Ukraine of October 7, 2014 amended the Code of Cirminal Procedure of Ukraine and expanded its Part 2 of Article 7 with the following wording: «The content and form of criminal proceedings in the absence of the suspect or the accused (in absentia) shall comply with the general principles of criminal proceedings. The prosecutor is obliged to use all the possibilities provided by law for the rights of the suspect or the accused (including the right to protection, access to justice, secret communication, non-interference in private life) in case of criminal proceedings in the absence of the suspect or the accused (in absentia)»⁹¹.

According to media reports, the first sentence according the procedure in absentia was passed by the Slavyansk city district court which found a former police officer guilty in accordance with Part 1 of Art.258-3 of the Criminal Code of Ukraine (participating in a terrorist group or terrorist organisation). He was sentenced in absentia to 9 years in prison with confiscation of property⁹². In fact, the work of law enforcement and judicial authorities towards ensuring the prosecution of those responsible for violating the rights of prisoners is being carried out. But there remain two main points:

- » the possibility of enforcing a sentence of a court passed according to the in absentia proceedings;
- » personal interest of victims in documenting criminal offences committed against them and in appealing to the law enforcement authorities based on the committed crimes. A large number of victims and their relation to criminal proceedings complicate the work of the newly established department within the Main Military Prosecutor's Office of the Prosecutor General of Ukraine.

Currently, it is quite difficult to talk about the effectiveness of criminal proceedings within which the pre-trial investigation of torture against prisoners in Eastern Ukraine is conducted. If one compares the work of the Main Military Prosecutor's Office of the Prosecutor General of Ukraine and that of the National Police of Ukraine, it could be claimed that the work of the first body is more productive. The Office established the cooperation mechanism with the Security Service of Ukraine which allows getting the most complete information during the investigation. However, there remains the problematic issue of completing assignments by investigative bodies locally: to interview victims and collect evidence. Investigative actions are seen only as a formality which adversely affects its performance and quality. Instead, the investigation conducted by the departments of the National Police of Ukraine consists of only recording of statistical information. In fact, in response to a query on the state of the investigation it is reported, for example:

«Conducting of the investigation is complicated by the fact that the scene of the crime is on the territory, temporarily occupied by illegal armed groups.»



⁹¹ The Law of Ukraine «On Amendments to the Criminal and Criminal Procedural Codes of Ukraine regarding the inevitability of punishment for certain crimes against national security, public safety and corruption offenses» of 10.07.2014 No. 1689-VI // [electronic source]: http://zakon5.rada.gov.ua/laws/ show/1689-18.

⁹² The first sentence in absentia has been passed in Ukraine // [electronic source]: http://www.newsru. ua/arch/ukraine/12nov2015/perviyzaochniy.html.

CONCLUSIONS AND RECOMMENDATIONS

he course of the conflict in the East of Ukraine, its aggravation and peace negotiations directly affect the number of victims to be recognised at the legislative level as victims of the confrontation. More than three thousand people (both civilian and military) were captured by illegal armed groups. The report has analysed the main national and international legal provisions governing the status and the rights of prisoners; noted basic human rights violations regarding prisoners in the East of Ukraine; illustrated the position of the European Court of Human Rights on torture, cruel and degrading treatment, forced labor and illegal prosecution of persons; described the system of investigating these violations.

The report has identified the issues requiring attention at the national level:

1. Statutory determination, unification and clear distinction between concepts «a hostage» and «a prisoner» in terms of legal status and also rights of victims to legal, social, medical and psychological assistance of those released from illegal detention. Clear guidelines are to be developed for the

system of free legal aid, for example, concerning restoration of the lost documents of prisoners, addressing the issues of military service, receiving appropriate benefits. Medical assistance should be provided both to the military and the civilians who suffered illegal detention and captivity. The issues of psychological rehabilitation of the released persons should be identified separately. In this aspect there should be a distinction depending on the category of a prisoner, providing psychological assistance to the affected civilian person should be different from military.

2. Both civilians and soldiers who were imprisoned by the representatives of the self-proclaimed republics in the East of Ukraine should be subject to single standard records. Although overall data is currently available through Joint Coordination Centre for Search and Release of Illegally Imprisoned Persons, Hostages and Determining the Whereabouts of the Missing Persons in the ATO Zone under the auspicies of the Security Service of Ukraine, for more than half a year, there has been no legal basis to support such data recording, make it public and use its data.



- 3. One should emphasise the issue of release of prisoners, as their long-term stay in captivity is caused by problems in the negotiation process concerning the POW exchange. In accordance with international law, issues of release of prisoners are regarded as humanitarian affairs. Instead, the negotiations which are held within the framework of the Minsk Agreements by the Trilateral Contact Group have a political orientation that literally turns prisoners into some kind of goods. It is necessary to consolidate the process of negotiations concerning the exchange at the legal level and to transfer it into the humanitarian level. Currently, it is transpiring that the Minsk Agreements covering the exchange of POWs are an ineffective mechanism, as the negotiations or exchange is regularly disrupted. Another legal mechanism that exists is under the Convention on the Transfer of Sentenced Persons (1983) is also inapplicable in the case of this conflict, that is why there is a need to create an effective mechanism that would guarantee an effective exchange of prisoners.
- 4. The issue of responsibility of the military unit and military commanders to the capture of the unit's personnel. The legislation has a clearly defined procedure, but it applies to the Armed Forces of Ukraine, while not covering units of the National Guard of Ukraine, Ministry of Internal Affairs of Ukraine and volunteer battalions. Issues concerning the responsiveness to the fact of capturing a soldier and completeness of the official investigation remain relevant.

- 5. The issues related to documenting experience of victims are also of great importancean important aspect in particular, documenting of violations that had been committed against them and identification of individuals responsible for the detention and conditions of detention. First of all, the work of this nature should be carried out by law enforcement authorities. Criminal proceedings which are carried out by the National Police of Ukraine of ill-treatment of prisoners remain ineffective.
- 6. The issue of legal qualification of acts committed in Donetsk and Luhansk oblasts within criminal proceedings of the Main Military Prosecutor's Office of the Prosecutor General of Ukraine requires finding of a solution. During general pre-trial investigation both the circumstances of capture of prisoners as an act of terrorism and ill-treatment of POWs as a war crime during the international armed conflict should be considered.
- 7. Bringing the perpetrators to justice by making in absentia judgment is a possible variant of the trial in the absence of the accused. However, the possibility of the execution of the sentence remains under question. It makes sense, in particular, in this case to use the mechanisms of international search of criminals.
- 8. It is necessary to coordinate and unify all laws and regulations relating to the status of soldiers participating in the conflict in the East of Ukraine and the status of victims during the armed conflict.





The report has been prepared with the support of the Government of Sweden. Points of view and interpritations in this publication do not necessarily reflect those of the Government of Sweden.