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# Unlawful detentions and torture committed by Ukrainian side in the armed conflict in Eastern Ukraine

UKRAINIAN HELSINKI HUMAN RIGHTS UNION,  
KHARKIV HUMAN RIGHTS PROTECTION GROUP  
AND NGO "TRUTH HOUNDS" REPORT

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**Unlawful detentions and torture committed by Ukrainian side in the armed conflict in Eastern Ukraine: Ukrainian Helsinki Human Rights Union, Kharkiv Human Rights Protection Group and NGO "Truth Hounds" report/** Andrii Gladun, Svitlana Val'ko, Serhiy Movchan, Oleg Martynenko, Yanina Smelyanska/ Ukrainian Helsinki Human Rights Union, Kharkiv Human Rights Protection Group and NGO "Truth Hounds" — Kyiv, 2017.



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# Summary

This report is focused on the cases of unlawful detention and torture committed by Ukrainian side in the armed conflict in Eastern Ukraine.

Ukrainian Helsinki Human Rights Union, NGO "Truth Hounds" and Kharkiv Human Rights Protection Group have documented cases of detention of 23 persons based on 20 interviews with victims and witnesses of events, as well as photos and supporting documents. 19 out of 23 detainees were subjected to torture and ill-treatment. Most of the cases described in the report took place in 2014 and 2015. Among the documented arrests, only in three cases the arrested persons had been involved in the acts of violence aimed at overthrow of Ukrainian government. In the remaining cases, the persons arrested had participated in non-violent rallies or had not participated in any political events whatsoever.

The testimonies of victims, collected by the authors during monitoring visits lead to the conclusion that in 2014 and 2015 the practice of detaining local inhabitants of Donetsk and Lugansk regions under the general suspicion of "separatism" was widespread. Such acts were conducted with the violation of Criminal Procedure Code of Ukraine (hereinafter - CPC). Abduction and keeping of the arrested persons in secrecy without any means of communication with the outside world allows qualifying such acts as enforced disappearances. Detainees were subjected to torture, particularly during interrogations with the purpose of obtaining information about alleged possession of weapons and support of the separatists. Under the pressure of torture, detainees were forced to accept the responsibility for crimes they did not commit. In addition, seizure of property and money of the detained persons during unsanctioned searches became a common practice. In some cases, detainees were used as human shields or were forced to work in conditions

that threatened their lives. The actions described above violated the national legislation, international human rights law and international humanitarian law. In particular, the torture of civilians and the use of civilians as human shields are classified by the Rome Statute of the International Criminal Court as war crimes.

The perpetrators of torture and unlawful detentions could not be identified in every single case; however, most of the victims reported that the Ukrainian volunteer battalions committed the violations. In particular, the victims recognized some members of "Shakhatrs'k" ("Tornado"), "Aidar", "Dnipro-1" and "Azov" units as perpetrators of torture, enforced disappearances and unlawful detentions.

Our biggest concern is the lack of effective investigation of cases, similar to the ones described in this report. Unlike the situation in 2014, the Ukrainian government has full effective control over law-enforcement in the regions, while the legal status of most of the volunteer units is determined. However, there is very little progress in investigation of war crimes and human rights violations. In particular, the Prosecutor's Offices passed no more than 2 percent of all criminal proceedings, opened according to the facts of unlawful detentions in the Donetsk and Lugansk regions, to the courts. In total, since the beginning of anti-terrorist operation (hereinafter - ATO) only 47 members of the Armed Forces and law enforcement bodies of Ukraine have been prosecuted on charges of unlawful detention in Donetsk and Lugansk regions.

Being committed to the principles of peace, security and justice, the authors believe that it is necessary to conduct a full and thorough investigation of the acts, described in this report, and bring the perpetrators to justice in order to ensure proper respect for fundamental human rights.

# Introduction

A large part of reports of Ukrainian human rights organizations concerning human right violations in the East of Ukraine are focused on the violations committed by the self-proclaimed "LPR" and "DPR". In particular, numerous human rights violations, committed in the illegal places of detention in the territories, uncontrolled by Ukrainian government, are analyzed in detail in the report "Surviving hell"<sup>1</sup> and various other publications. However, as of today, the instances of the similar violations, committed by the Ukrainian side have not been analyzed by the national human rights NGOs, and are mainly brought to light by international institutions. For example, "Truth Hounds" in co-operation with the International Partnership for Human Rights published a report<sup>2</sup> with an overview of crimes committed by both sides of the conflict and submitted the obtained evidence to the International Criminal Court in The Hague. However, at the level of the Ukrainian government and civil society, the topic of war crimes committed by the Ukrainian side is swept under the carpet.

First of all, such situation has to do with the lack of access to the testimonies of victims. Former detainees, who were released from captivity of pro-Russian separatists and currently reside on the territory, controlled by the Ukrainian government, provide their testimonies to human rights defenders without fear due to presence of strong system of protection of personal data. However, those, who suffered from the actions of Ukrainian military and law-enforcement officials, are not willing to speak about their personal experience, being afraid of

further persecutions and pressure even under conditions of reliable protection of their testimonies. Secondly, documenting of human rights violations on the uncontrolled territory is connected with significant difficulties for Ukrainian human right defenders. Thirdly, Ukrainian law enforcement officials are not ready to publish the complaints against their actions in the zone of ATO. As a result, the civil society today has access to only a small fraction of testimonies of people whose rights have been violated by the Ukrainian law enforcement or the military in the conflict zone. Some of the persons, whose evidence was used in this report, agreed to speak only after two years have passed since after the tragic events that had happened.

Unfortunately, there is a tendency in Ukraine to justify the war crimes, committed by the Ukrainian units, by the state of war. For instance, members of "Tornado" battalion accused of kidnappings, torture and rape, denied their responsibility, claiming that they had kept in the places of detention ("in basements") only the "separatists"<sup>3</sup>. Nevertheless, this report shows that a wide range of people was subjected to torture and ill-treatment. Both ordinary citizens who participated in peaceful rallies, or who did not participate in political events at all, and combatants were held "in Ukrainian basements". The aim of this report is to present the evidence of serious violations of human rights and international humanitarian law committed by the Ukrainian side in 2014-2015 during the armed conflict in Eastern Ukraine. Persons responsible for these violations should face individual criminal liability according

<sup>1</sup> "Surviving hell: Testimonies of Victims on Places of Illegal Detention in Donbas, <http://library.khpg.org/index.php?id=1451396568>

<sup>2</sup> IPHR: Fighting impunity in Eastern Ukraine: <http://iphronline.org/wp-content/uploads/2016/05/Fighting-impunity-in-Eastern-Ukraine-October-2015.pdf>

<sup>3</sup> Hromadske radio: The verdict for "Tornado" battalion declared behind closed doors. "Tornadivtsi" are dancing in court (PHOTO, VIDEO) <https://hromadskeradio.org/news/2017/04/07/vyrok-roti-tornado-ogoloshuyut-uzakrytomu-rezhymi-reportazh-foto>

to the international treaties and Ukrainian legislation. A thorough investigation has to be conducted and the perpetrators have to be brought to justice. The authors of the report seek to close the gap of impunity associated with the crimes committed by the Ukrainian side and to assist the international and Ukrainian bodies in bringing the perpetrators to justice.

It is important to note that not all instances of arrests, documented in this report were unjustified.

However, torture is strictly prohibited by international humanitarian law and human rights law. No exceptional circumstances whatsoever may be invoked as a justification of torture. All instances of torture should be investigated. Even assuming that the persons who resorted to torture aimed to obtain evidence about actual or committed or planned crimes, their actions were entirely unjustified as the evidence obtained in violation of the CPC of Ukraine (for example, with the use of torture or ill-treatment) cannot be used in courts.

Ukrainian Helsinki Human Rights Union, NGO "Truth Hounds" and Kharkiv Human Rights Protection Group urge the government of Ukraine and law enforcement agencies to make every effort to conduct thorough, effective and impartial investigation of all allegations of unlawful detention, torture and extrajudicial executions committed by the Ukrainian units in the zone of armed conflict in Eastern Ukraine and to bring the perpetrators to justice.



# International legal standards

International humanitarian law allows detention during international armed conflicts. In particular, the internment of civilians of a hostile power is allowed under Art.42 of the IV Geneva Convention "Relative to the Protection of Civilian Persons in Time of War"<sup>4</sup> "only if the security of the Detaining Power makes it absolutely necessary". However, according to Art.147 of the IV Geneva Convention, unlawful deportation or transfer or unlawful confinement of a protected person are prohibited. These violations are considered as grave breaches, and the convention imposes an obligation on the parties (including Ukraine) to bring the perpetrators before the court.

The national law and international human rights law regulate detention in case of non-international armed conflict<sup>5</sup>. In particular, Art.9 of the Universal Declaration of Human Rights<sup>6</sup> states that "no one shall be subjected to arbitrary arrest, detention or exile". The International Covenant on Civil and Political Rights<sup>7</sup>, ratified by Ukraine, states the rights of the arrested persons. In accordance with Art.9 anyone who is arrested should be informed of the reasons for his arrest. The arrested person should be promptly brought before the court or such a person should be released. Detainees are also entitled to a right to challenge the legality of their detention in court and receive a compensation if the arrest or detention are recognized as unlawful. Unfortunately,

all these rights were consistently violated during the detention of persons suspected of "separatism" in the zone of ATO in 2014-2015.

Additionally, on 19 June 2015 Ukraine ratified the "Convention for the Protection of all Persons from Enforced Disappearance"<sup>8</sup>. The enforced disappearances are considered to be the arrests, detentions, abductions or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by concealment of the fate or whereabouts of the disappeared person. The Convention provides that no one should be subjected to enforced disappearance. In particular, secret detention is prohibited. The instances of latter were also documented in the zone of ATO.

International humanitarian law and international human rights law strictly prohibit torture. In particular, torture is prohibited by Art.7 of the International Covenant on Civil and Political Rights and Art.3 of the European Convention on Human Rights<sup>9</sup>.

According to the "Convention against torture and other cruel, inhuman or degrading treatment or punishment", "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining information, punishing, or in-

<sup>4</sup> IV Geneva Convention "Relative to the Protection of Civilian Persons in Time of War" <https://ihl-databases.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>

<sup>5</sup> IRCC: Customary IHL; Arbitrary deprivation of liberty is prohibited [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule99](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule99)

<sup>6</sup> Universal Declaration of Human Rights [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)

<sup>7</sup> International Covenant on Civil and Political Rights <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

<sup>8</sup> International Convention for the Protection of All Persons from Enforced Disappearance <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>

<sup>9</sup> European Convention on Human Rights [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)  
Criminal Procedure Code of Ukraine <http://zakon2.rada.gov.ua/laws/show/4651-17>

timidating or for any reason, inflicted by or at the instigation of or with the consent of a public official. States that are parties to the Convention undertake the obligation to prevent acts of torture and treat them as offences under criminal law. No exceptional circumstances such as state of war or internal instability may be invoked as justification of torture.

Similarly, international humanitarian law contains several provisions that prohibit torture against the prisoners of war and civilians. In particular, according to Art.130 of the III Geneva Convention "Relative to the Treatment of Prisoners of War" and Art.147 of the IV Geneva Convention "Relative to the Protection of Civilian Persons in Time of War", grave breaches are "willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body

or health". Conventions impose an obligation on the states to conduct the search for and bring before the courts the persons, who committed the grave breaches.

Moreover, international humanitarian law prohibits assignment of protected persons to work, which implies their participation in military actions. This provision is enshrined in Art.51 of the IV Geneva Convention "Relative to the Protection of Civilian Persons in Time of War" and Art.52 of III Geneva Convention "Relative to the Treatment of Prisoners of War". Additionally, according to the Rome Statute of the International Criminal Court, the use of protected persons with a purpose of making certain objects immune from military operations is classified as a war crime.

# Standards under national law

Criminal Procedure Code of Ukraine establishes the rules that regulate the detention of persons suspected of having committed criminal offenses<sup>10</sup>. According to Art.207 of the CPC of Ukraine, no one shall be arrested without a decision of an investigating judge, except for two cases when a person is arrested:

1. While committing or attempting to commit a criminal offense;
2. Immediately after the criminal offense has been committed or during the continuous pursuit.

Any person can perform such arrests. However, if an unauthorized person performs the arrest, he/she must immediately deliver an arrested person to the authorized officials or notify them about the arrest. An authorized official that performed the arrest should immediately notify the arrested person in a clear manner about:

- the grounds for arrest and suspicion against him/her of having committed a certain crime;
- the right to legal counsel;
- the right to receive medical aid;
- the right of the arrested person to testify or to remain silent about the suspicions against him/her;
- the right to immediately inform other persons about the arrest and its location;

- the right to request the verification of the reasonableness of arrest and other procedural rights.

A police officer conducting the arrest should deliver an arrested person to the nearest pre-trial investigation body, which immediately registers the date and exact time of delivery<sup>11</sup>. The official, who performed the arrest, should immediately notify the responsible persons in a pre-trial investigation body about each case of arrest.

During the arrest, an authorized official, an investigator or a prosecutor can conduct a personal search of the arrested person, if two attesting witnesses or continuous video fixation are available<sup>12</sup>. In the case of a search of a house or other property of the arrested person, the ruling of an investigating judge or a prosecutor and the presence of at least two attending witnesses are required.

No one can be detained for more than 72 hours without ruling of an investigating judge<sup>13</sup>. A person, arrested without the ruling of an investigating judge, should be released or brought to court for selection of a preventive measure no later than 60 hours from the moment of the actual arrest.

According to the "Instruction on the order of preventive arrest in the area of anti-terrorist operation"<sup>14</sup>, adopted jointly by the Ministry of Interior, the General Prosecutor's Office of Ukraine and the Security Service of Ukraine, preventive arrests of persons reasonably suspected of terrorism for up to 30 days are allowed in the zone of ATO without the ruling of an investigating judge. Such arrests

<sup>10</sup> Criminal Procedure Code of Ukraine <http://zakon2.rada.gov.ua/laws/show/4651-17>

<sup>11</sup> Art.210, Ibid.

<sup>12</sup> Art.223, Art.236, Ibid.

<sup>13</sup> Art.211, Ibid

<sup>14</sup> A joint order of the MI, GPO, SSU from 26.08.2014 no. 872/88/537 "On adoption of the Instruction on the order of preventive arrest of persons involved in terrorist activities and special regime of pre-trial investigation under martial law, state of emergency or in the area of anti-terrorist operation" <http://zakon3.rada.gov.ua/laws/show/ru/z1038-14>

are possible with decision of a prosecutor, which must be taken within 72 hours from the arrest. Such decision is conditional on whether the arrested person was immediately informed of his/her rights. The arrested person is entitled to challenge his/her arrest in court anytime. In addition, he/she should be immediately released if within 30 days from the arrest he/she is not given a reasoned court ruling on his/her detention.

An investigating judge decides upon application of preventive measures<sup>15</sup>. A preventive measure is applied only if there are reasonable grounds to believe that a suspect has committed a criminal offense, and he/she may:

- hide from the pre-trial investigation and/or trial;
- alter any evidence;  
unlawfully influence victims and witnesses;
- obstruct criminal proceedings in any other way;
- commit a criminal offense again.

At the same time, according to Art.206 of the CPC an investigating judge has certain rights and obligations to protect the human rights of the arrested persons, including:

- the right to oblige any public authority or officer to ensure respect for the rights of an arrested person;
- the duty to oblige the authority or officer, who keep a person in custody, to immedi-

ately deliver him/her for establishing the reasons for the arrest;

- the obligation to release an arrested person from custody in case of lack of legal grounds for detention;
- the duty to take the necessary measures to ensure the right to protection of a person, deprived of liberty.

If the appearance of a detained person, his/her condition or other known circumstances provide grounds for reasonable suspicion of a violation of law during the arrest, an investigating judge should take the measures, mentioned above.

Art.224 of the CPC of Ukraine allows conducting interrogations. The interrogation may be conducted for no more than 8 hours per day and for no more than two hours without a break. Persons, who are being interrogated, should be explained their rights before interrogation. Persons who are being interrogated have the right not to answer several types of questions. In particular, they may refuse to answer the questions that may cause suspicion against them or their family members or relatives.

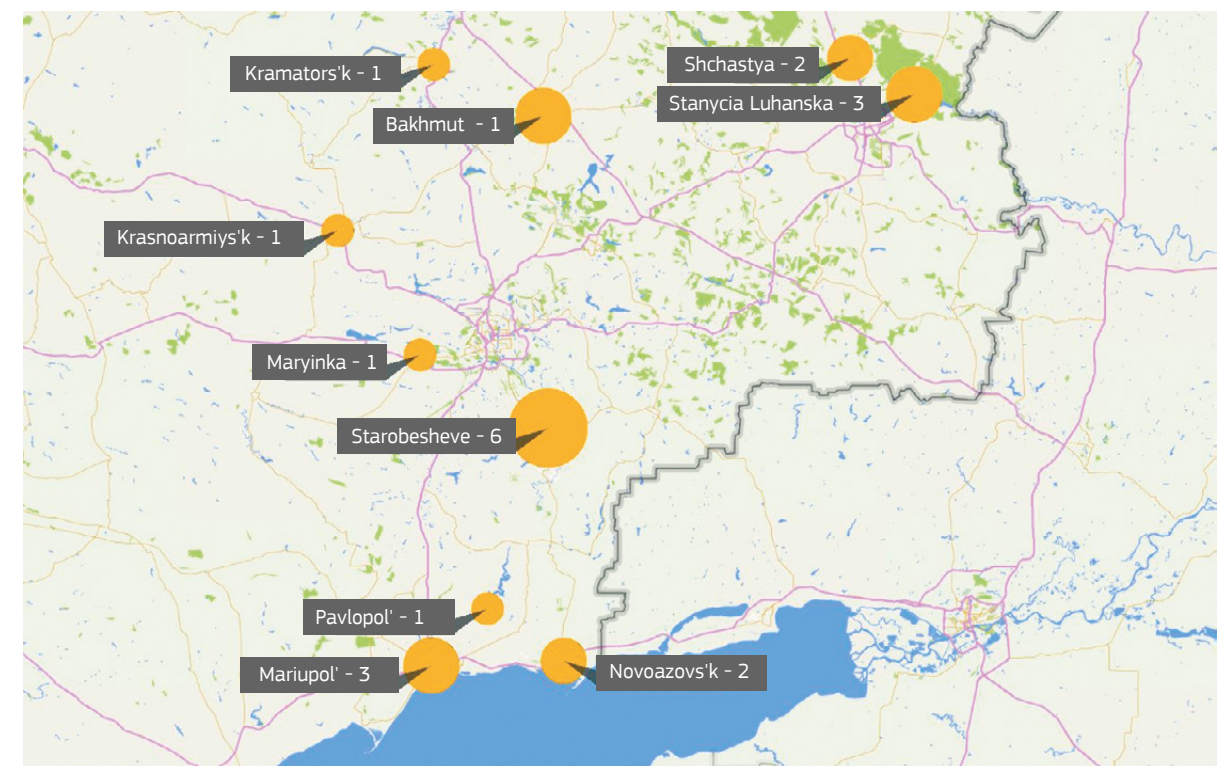
Torture is absolutely prohibited in Ukraine. According to Art.28 of the Constitution of Ukraine, "no one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment". Art.87 of the CPC of Ukraine prohibits the use of evidence obtained in violation of human rights and freedoms, including evidence obtained through torture, cruel or inhuman treatment, or the threat of thereof.

# Sources of information and methodology of data collection

Apart from the testimonies of victims themselves, the interviews contain information about arrests and/or torture committed against another 56 persons, who were held together with the respondents. According to our information, the testimonies ana-

lyzed here, had not been previously published in other human rights reports. The names of all persons whose cases are described in the report were changed. Some of the documented cases are not described in detail at the request of the victims.

## NUMBER OF DOCUMENTED CASES OF ILLEGAL DETENTION, BY THEIR APPROXIMATE LOCATION



<sup>19</sup> Art.177, Criminal Procedure Code of Ukraine <http://zakon2.rada.gov.ua/laws/show/4651-17>

While collecting the data, the documenters faced a number of difficulties. Firstly, these were practical and administrative obstacles in accessing victims and witnesses of crimes allegedly committed by the Ukrainian side, who resided in the separatist-controlled territory. Secondly, the victims of alleged crimes committed by the Ukrainian side, who live in areas controlled by Ukraine, fear that they may be persecuted if they provide the evidence. To protect such witnesses we ensure full confidentiality. Unfortunately, most of the witnesses of crimes committed by the Ukrainian side are too scared to participate in the investigation on the territory of Ukraine and do not believe that such investigations would be impartial, and that their life and well-being

would be protected. Thus, such persons allow using their testimonies only in international courts.

Information about the progress of investigations of crimes, allegedly committed by military and law enforcement officials in Donetsk and Luhansk regions of Ukraine was received in response to the requests for public information, sent to the General Prosecutor's Office of Ukraine.

The organization "Truth Hounds" has submitted some of the evidence analyzed in the report to the International Criminal Court, together with the accompanying data.

# Unlawful detentions and torture: individual cases

In this section, we review the individual cases of persons whose rights have been violated during the detention by Ukrainian military or law enforcement authorities in the zone of ATO. The acts described here took place in different locations and were committed by different units. Yet, they represent many commonalities.

As noted above, in 2014-2015 the detentions of local inhabitants as potential "separatists", out of general suspicion or by someone's guidance, were commonplace. Such detentions took place with violations of the CPC of Ukraine. In particular, detentions took place without court rulings, detainees were not informed about the suspicion of having committed a specific crime, they were not explained their rights and they were denied the right to protection.

Abduction and keeping of the arrested people in secrecy allows us to classify such detentions as enforced disappearances. Detainees were subjected to violence and torture. In 19 out of 23 cases analyzed, individuals were subjected to torture and ill-treatment, usually in the form of beatings or mock executions. In some cases, torture by electricity or water was used. Typically, torture was used during interrogations in order to obtain the information about the alleged possession of weapons and support for the separatists. Under the influence of torture, detainees often accepted the responsibility for crimes they have not committed. In addition, the seizure of property during unauthorized searches was commonplace. Such property, including cars and computer devices, was frequently not returned to detainees upon release.

## STAROBESHEVE

### FAMILY OF A SHOP OWNER<sup>16</sup>

An elderly man Sergiy<sup>17</sup>, together with his son Andriy and his grandson Oleksiy, ran a shop in the town of Starobesheve. Andriy took part in the referendum on the recognition of "Donetsk People's Republic" in Starobesheve region, and in May 2014 he joined the "DPR" as a combatant. Sergiy and Oleksiy did not participate in the referendum and were not the members of the "DPR"; yet they continued to operate the shop together with Andriy.

In the end of July 2014, a car with four people wearing Ukrainian military uniforms stopped next to Sergiy's house. The uniformed men asked what Sergiy's last name was. After hearing it, they fired two shots in the air and forced Sergiy and his grandson Oleksiy to sit inside the car. Persons in the military uniform did not introduce themselves and did not inform the arrested persons about the reasons for arrest. They took detainees to Andriy's house and later on, to their store, and conducted searches in both locations. During a search in the store, all computers and the system for cashless payments were seized and the video surveillance system and the alarm were broken.

<sup>16</sup> Data from the "Truth Hounds" database

<sup>17</sup> All names of the victims were changed

After the searches, both detainees were taken to the military outpost nearby. The soldiers pulled Sergiy and Oleksiy out of the car and beaten them with rifle butts, forcing them to fall to the ground. As they were lying on the ground, they were beaten with rifle butts and kicked until they lost consciousness. Sergiy was accused of being a "DPR" sniper. During the beating, Sergiy was forced to call one of his employees with the request to bring one of the cars in possession of the shop. Soldiers have seized the car. After the beating, the detainees were placed into separate cars and driven in the direction of Sedove urban settlement. Since then, Sergiy has not seen his grandson, Oleksiy. Persons who transported Sergiy to Sedove called each other by noms de guerre "Doc" and "Butcher" ("Myasnyk").

After the arrival, Sergiy was placed in the basement and interrogated. During the interrogation, he was tortured: Sergiy's head was drowned in a water tank. On the next day, he was brought to Tel'manove village, where he was put in hospital; the hospital staff were ordered to cure Serhiy from the consequences of beatings and torture within 2-3 days so that he could be taken for prisoner exchange. Initially he was held under the guard, but later the guard was removed. In two weeks Sergiy was discharged from the hospital; he was not sent for the exchange.

The body of Oleksiy (Sergiy's grandson) was found on the next day after their arrest on the highway in the suburbs of Starobesheve. The body had numerous signs of violence and torture. During the interview, the relatives showed the photo of the body to the interviewers. The family managed to obtain a copy of the proceedings of criminal case, initiated by the Starobesheve Prosecutor's Office on the matter of Oleksiy's death. According to the proceedings, soldiers of the Armed Forces were suspected of murdering Oleksiy. However, investigation has not identified any suspects.

Although it is impossible to establish accurately who arrested Serhiy and Oleksiy, witnesses claim that these were the representatives of "Azov" battalion. This information is additionally confirmed by the fact, that members of the "Azov" with noms de guerre "Doc" and "Butcher" were mentioned as perpetrators of torture in other interviews.

Sergiy died due to heart problems shortly after the death of his grandson. At the moment, the criminal case and numerous statements of Oleksiy's grandmother, filed to the Prosecutor's office, are not being investigated. The investigators lost all materials of the criminal case file.

### HEAD OF AN AGRICULTURAL ENTERPRISE<sup>18</sup>

Petro was the head of an agricultural enterprise in the suburbs of Starobesheve. Ukrainian Armed Forces positions were situated on the premises of the enterprise<sup>19</sup>. There were many conflicts between the military and the employees, particularly due to placement of landmines on the enterprise territory.

In July 2014, the first conflict between Petro and the military occurred at the checkpoint. Petro saw the soldiers open fire in the direction of the car driven by his son, Ivan. According to Petro, military claimed that they thought Ivan was an artillery spotter. The conflict was solved, but

<sup>18</sup> Data from the "Truth Hounds" database

<sup>19</sup> Placement of military positions in residential areas or inside civilian objects legitimizes the warfare in that area, turning the village or quarter into a military object. Thus, shelling of such objects is no longer considered a war crime or an indiscriminate attack on the civilians in accordance with the Rome Statute of the ICC. Placement of military positions inside protected objects renders impossible the preservation of the principle of distinction and definition of an attack as a war crime in accordance with Art.85 of Additional Protocol I; Art.8 of the Rome Statute of the ICC.

a few days later Ivan was detained by the military. When Petro asked the soldiers about the reasons for Ivan's detention, they answered that Petro had to come and have a talk with them, and they would release his son. The precise reason for the arrest was not provided.

Having arrived to a specified location, a military checkpoint, Petro and his employee, who accompanied him in the same car, were pulled out and thrown on the ground. Somebody put bags over their heads and started kicking and beating them with rifle butts. After the beating, they spent several hours lying on the ground. It was raining all the time. Subsequently, there was mock execution: Petro was brought to the edge of a pit, where he could see a human leg from under the bag on his head. Soldiers fired several shots over his head and took him for interrogation.

*"I was brought to the tent; there was a man wearing a mask ["balaclava"]. He said that we brought weapons from Russia, hid them in the grain in the warehouses, and at night we distributed them among people. When the bag was removed from my head, I saw [another] man, his face was broken so hard that I wouldn't recognize him if I saw him now with a normal face. He was interrogated before me."*

During the interrogation, soldiers conducted an unauthorized search at the company's warehouses but they have not found anything.

After the interrogation, Petro and his employee were moved to a different checkpoint, where another interrogation took place. Military men checked their mobile phones and numbers which they dialed. According to the victim, soldiers threatened to take away his house and business. After the second interrogation, all detainees, including Petro and his son, were released.

A few days later, there was another conflict between the military and the employees of the enterprise. Soldiers blocked the path to the field for the employees. They called Petro and said that he had to come again. Shortly afterwards, Petro received a second call from the security guard of his company, who claimed that the military seized a tractor and trucks from enterprise's garages, and drove towards Petro's house. Seeing military men in the yard of his house, he left through the back door and fled to Donetsk. Later he moved to Russia with all his family.

## MARYINKA

### PRISONER OF "TORNADO"<sup>20</sup>

Maksym, a civilian from Maryinka, who did not take part in any political activity, was arrested near his house in early August 2014 by battalion "Shakhtars'k"<sup>21</sup> during the house to house searches in the city. An SUV without the number plates and with broken ignition lock had stopped near the house. Maxim and 5 other civilians from Maryinka were placed inside the car; their hands were tied with plastic ties. Firstly, the detainees were taken to the yard of a house where soldiers shot a lock and conducted a search. Later they were taken further.

<sup>20</sup> Data from the "Truth Hounds" database

<sup>21</sup> Subsequently, the battalion has been reformed into "Tornado" unit



On their way the detainees were used as human shields; soldiers used them to cover from a sniper's fire. According to the victim's testimony, the sniper fired before the car, rather than at the car itself. The practice of using people as human shields is prohibited by the international law and is classified by the Rome Statute of the International Criminal Court as a war crime<sup>22</sup>.

Later, the detainees were brought to the territory of a tire-mounting workshop, where they were forced to carry tires. In the evening, they were forcedly moved to Mariupol. Upon their arrival, plastic bags were put on their heads and they were chained in pairs. On the first day detainees were beaten. Maksym has a scar and kidney problems from the beating with a whip.

In Mariupol, the detainees were forced to work: they cleaned toilets and dug pits. During all this time, they slept in the open air. Maksym also stated that he and other detainees were taken to Ilovaysk and Shakhtars'k during the battles, where they were forced to collect body parts on the battlefield<sup>23</sup>.

Maksym was held in Mariupol for a month, before being transferred to Volnovakha in September and subsequently - to the camp of "Shakhtars'k" battalion, situated in a boarding house near Novomoskovsk (Dnipropetrovsk region). In the beginning of November 2014, Maksym managed to escape from captivity with the help of one of the soldiers. He spent more than 3 months in captivity.

## MARIUPOL' AND SURROUNDINGS

### THE BUS DRIVER<sup>24</sup>

Oleksandr worked as a bus driver. Before the conflict, he delivered food in Donetsk region by his own car. Since the beginning of the conflict, he began to earn money by transporting people from the area of the ATO to the territory of other regions of Ukraine and to Russia.

In early August 2014 he was stopped at the checkpoint near Novoazovs'k (Donetsk region), when he was carrying a passenger in the direction of Rostov-on-Don.

At the checkpoint, the soldiers checked his passenger's phone and found the photos from rallies, where "DPR" flags could be seen. They pulled Oleksandr and his passenger out of the bus and forced them to sing the national anthem of Ukraine. When both said that they didn't know the words, they were beaten. Subsequently, they were thrown into a pit, dug near the checkpoint.

*"We sat in a pit for about an hour. Since the checkpoint wasn't illuminated, VAZ 2110 [car model] crashed into the checkpoint's concrete block. The slam was loud. Soldiers started shooting and screaming. An elderly driver was pulled away from the steering wheel. They started beating [him] and screamed that he wanted to commit a terrorist attack. Yet, apparently the driver simply did not notice [the concrete block]. I have barely managed to stop myself."*

<sup>22</sup> Rome Statute of the ICC

<sup>23</sup> The international humanitarian law strictly prohibits assignment of civilians to work, directly related to the military operations

<sup>24</sup> Data from the "Truth Hounds" database

Subsequently a car with insignia of "Dnipro-1" battalion approached the checkpoint. Five soldiers exited from the car. They tied Oleksandr's and his passenger's hands by ropes, put bags on their heads and took them to Sedove urban settlement.

On the next day, in Sedove, the detainees were brought for an interrogation. During the interrogation, they were forced to sing the national anthem of Ukraine again. They said that they did not know it and were beaten again. According to Oleksandr, his passenger was beaten more severely because of photos found on his mobile phone; there were numerous bloodstains on the floor.

Detainees spent six days in Sedove. They were kept in a small room of about 4 m<sup>2</sup>. They received some food only on the third day: half a loaf of bread for two people. Oleksandr was not taken outside during all this time, while his passenger was forced to clean the surrounding area.

On the sixth day, the detainees were given some food and they were given an opportunity to wash themselves. They were told that "they were of interest for the Security Service of Ukraine", and they were forced to sign a statement addressed to the commander of the battalion that they had no complaints towards the "Dnipro-1" unit. Having signed the statements, they were moved to Mariupol with their hands tied, where they were put into another bus and driven in unknown direction for several hours.

Upon arrival, Oleksandr was handcuffed to a pole in the street, and was left there until the morning. In the morning, soldiers brought a table and forced him to write a statement that he agrees to collect and send the information about the separatists to the Armed Forces of Ukraine. Then, Oleksandr and his passenger were released. Oleksandr got back all his belongings except for the car, which he managed to return in a few months, after writing an application to the Security Service of Ukraine. As it turned out later, passenger's house was searched while he was detained; his computer, construction tools and his dog disappeared from the house.

In September 2014, Oleksandr was detained again. When Oleksandr was on a walk, a black van stopped near his house. Two men in tracksuits came out of it and forced Oleksandr get into the van. The kidnapers demanded the Oleksandr to tell them about his alleged cooperation with the separatists.

Oleksandr was taken to a local airport and was handcuffed to a pole. His was beaten with a stick and kicked on his back. According to Oleksandr, two people were handcuffed next to him. They were both beaten. One of them had outgoing calls to Russia in his mobile phone journal; soldiers demanded to say whom he passed information to.

Oleksandr spent two days fastened to a pole in the street. He was beaten during all this period. Only at night there were breaks between the beatings, but he remained handcuffed to a pole. He was given a piece of paper and was forced to write a statement about two hunters, whom he knew, who allegedly became "DPR" militants.

*"I was forced to write that they wore Russian camouflage with St. George's ribbons and carried weapons. I said: "How do I know?" They said: "Do you want to go home?" I wrote everything as they said."*

After writing the statement, Oleksandr was released. For a long time after that, Oleksandr received calls from SSU, who summoned him for questioning.

### PARTICIPANT OF THE «ANTIMAIDAN» RALLIES <sup>25</sup>

Vasyl worked as a system administrator in Mariupol. In spring of 2014, he participated in "Antimaidan" rallies near the Lenin monument in Mariupol. According to him, he participated in six rallies against the demolition of monuments. He stopped attending the protests when they became more violent as they no longer matched his civic interests. Vasyl was arrested in 2015.

In February 2015, two cars stopped near the shop where he worked; uniformed armed men in "balaclavas" got out of them. They aimed their weapons at Vasyl, forced him to get up and handcuffed him. Those armed men tried to find a bag to put over Vasyl's head, but found nothing and just forced him into the car. They placed a rifle barrel next to him and made him point the way to his brother's apartment.

Armed men took the computer, monitor, and several USB sticks from his brother's house. Vasyl's brother was also forced into the car. Then they drove to the apartment where Vasyl lived. In the apartment, they began to question Vasyl where he allegedly kept weapons. He was thrown on the floor, kicked and beaten with rifle butts. Armed men took two laptops and several hard drives from his apartment. Similarly, the armed men visited several other apartments, where they arrested two of Vasyl's friends and took some devices. In addition, they arrested an unknown drunk person in the street.

In half an hour, all the detainees were brought to the building, where Vasyl and his brother were separated. Vasyl and his friends were put in the basement; their hands were handcuffed behind their backs. In the basement, they were thrown to the ground and beaten by police batons all over the body. Vasyl was asked whom he worked for, how much did he earn and why did he allegedly participate in occupation of the state administration. The interrogation and the beating lasted for about 40 minutes.

After that, Vasyl was thrown into a room in the basement, where two other people already sat. One of them, in his own words, was kept there for six months, another one – Pavlo – has been recently arrested. It was hot in room, as there were no windows.

*"I did not realize what time it was. After some time, Pavlo was taken to a room nearby, and beaten there behind the metallic doors. I heard an electro shocker being used on him. I heard an electric discharge and a man shouting."*

Vasyl was taken away after Pavlo. He was beaten and forced to write a statement dictated to him, in which he had to confess of committing crimes.

Three days later Vasyl was taken out of the camera and beaten again. People, who were beating him, threw a jacket over Vasyl's head so that he could not see anything. They beat his head and broke the shaft of the shovel against his body. After that, they aimed a gun at Vasyl and pressed the trigger. There was no shot. People, who were beating Vasyl, told him that "next time there won't be a misfire".

After the mock execution, a man entered the room and asked Vasyl whether he wanted to talk to his brother. Vasyl was taken upstairs to the room where his brother was. They were given some food before another interrogation began. They were shown pictures of people and asked if they knew them.

<sup>25</sup> Data from the "Truth Hounds" database

Vasyl was no longer kept in the basement; he stayed in the room with his brother. A few days later a friend of Vasyl joined them. He admitted that Vasyl and his brother were detained because of him.

He told that he once tried to impress a young woman and told her that he and his friends had participated in the occupation of the state administration in Mariupol. She, in turn, shared this information with the Ukrainian military, who arrested all the persons mentioned. During the interrogation, one of them mentioned Vasyl, having known him as the participant of "Antimaidan" rallies.

After this episode, all detainees (according to Vasyl - 14 people at that time) were transferred to another building – a boarding house by the sea. There they were regularly fed, and they were not subjected to physical violence. All detainees, however, were involved in the construction of military fortifications on the coast, which, as mentioned above, violates international humanitarian law.

In the middle of March, Vasyl and rest of the detainees were released. All of them were forced to write a statement that they were "volunteers" and worked without coercion of any kind. Vasyl was not given his seized devices back. They were worth approximately 35 thousand UAH (Approx. 1525 EUR at that time). In total, Vasyl spent about a month in captivity.

### RURAL ELECTRICIAN<sup>26</sup>

Vyacheslav worked as an electrician in a village near Mariupol. After the shelling of the village in February 2015, he went to the checkpoint for a help repair of a power line, damaged by the shelling. At the checkpoint he was immediately detained, his passport was seized. Previously, he had no problems with the military.

Vyacheslav's hands were tied behind his back; soldiers pulled a hat over his head so that it covered his eyes and strapped it with a duct tape. Vyacheslav was taken to a housing cooperative in a village nearby. Upon arrival, he was immediately beaten. The beating lasted for about three hours. When he was laying on the ground, soldiers fired a gun between his legs.

After the beating, Vyacheslav was taken to the territory of Mariupol airport. Soldiers continued beating him. Vyacheslav was forced to confess of alleged collaboration with separatists, and soldiers stopped beating him only after he agreed. They pulled out his tongue and ears, threatening to cut them.

*- Guys, what are you doing? I have little kids at home!  
- Never mind, the state will raise them!*

*A dialogue between Vyacheslav and soldiers who beat him.*

Vyacheslav was forced to sign a written undertaking not to leave his place of residence. The man, who made him do it, said that he was an SSU officer. Later on, in the evening, Vyacheslav was released.

As it turned out later, Vyacheslav was detained because Ukrainian soldiers, who entered the village, believed that Vyacheslav provided information to separatists. In early December 2014, the village was briefly under the control of separatists. On the day when Ukrainian soldiers from the "Azov" battalion entered the village, Vyacheslav was on the way to his workplace and saw their vehicles. Thus, Ukrainian soldiers concluded that Vyacheslav warned the separatists of the approach of Ukrainian forces.

<sup>26</sup> Based on the data from UHHRU and KHRPG

## BAKHMUT AND SURROUNDINGS

### PRISONER OF "AIDAR"<sup>27</sup>

In May 2015, Yaroslav, a middle-aged man, decided to drive his friend to a country house by his own car. They were stopped at one of the checkpoints near Bakhmut, their documents were checked, and they were allowed to go on. However, soon they were overtaken by a car with soldiers. One of the soldiers got into Yaroslav's car and ordered them to drive towards a checkpoint nearby.

At the checkpoint, soldiers began questioning both passengers immediately, accusing them of "separatism" (according to Yaroslav, he never took part in any political events). The military searched the car; they put bags over both passenger's heads, tied their hands and put them in the back of the truck. Yaroslav was hung by his tied hands and he was beaten; all his teeth on one side were broken. One of the soldiers began cutting his ear. Yaroslav's friend saw a "Right Sector" chevron on the uniform of one of the soldiers, who beat them.

The beating continued until the truck has reached its destination – a military outpost. There Yaroslav was interrogated again, but this time without the beating.

After the interrogation, Yaroslav was separated from his friend and brought to a building, which he recognized as one of the factories in Bakhmut. He was kept alone in a warehouse building.

*"It seems that someone was tortured to death in that cell where I was kept in Artemivsk<sup>28</sup>. I saw specific traces of blood and brains. It was scary ... I realized it was some sort of torture chamber".*

At night, soldiers beat Yaroslav; they came to the room and forced him to confess of being an artillery spotter. They tried to plant a spotter's notebook on Yaroslav. Due to a hit on the back of his head, Yaroslav had the base of his skull fractured, but he found out about it only after his release. According to Yaroslav, the person who beat him was wearing the chevron of the "Aidar" battalion. After the beating, the soldiers tried to convince Yaroslav to testify that members of his family were the artillery spotters, but he refused.

On the next day, Yaroslav's friend was put into a same cell. On the previous night, he was held separately at military post, where he was beaten; his ribs were broken.

In the evening, the detainees were taken to the field with the bags on their heads. Soldiers told them to sit quietly for 15 minutes and then to take off the bags and drive away. The soldiers returned Yaroslav's car, but they pulled out the audio system and took all the money that were inside.

Yaroslav was arrested again in June 2015. That time he was also detained near Bakhmut, at the checkpoint. His car was taken away; he was sat in an another car. Again, his hands were tied and there was a bag on his head. He was brought to the premises of an unknown factory.

Yaroslav was interrogated. During the interrogation he was not beaten. However, there was a mock execution staged: shots were fired near his head and between his legs. He was forced to write a statement that he donated his car to the military in the zone of ATO and another statement that he has no complaints to the people who detained him.

Yaroslav was released on the same day; his car was badly damaged upon return. Yaroslav's new mobile phone has disappeared, but the rest of the items remained intact.

<sup>27</sup> Based on the data from KHRPG

<sup>28</sup> The name of Bakhmut before 2016

# Investigation of crimes

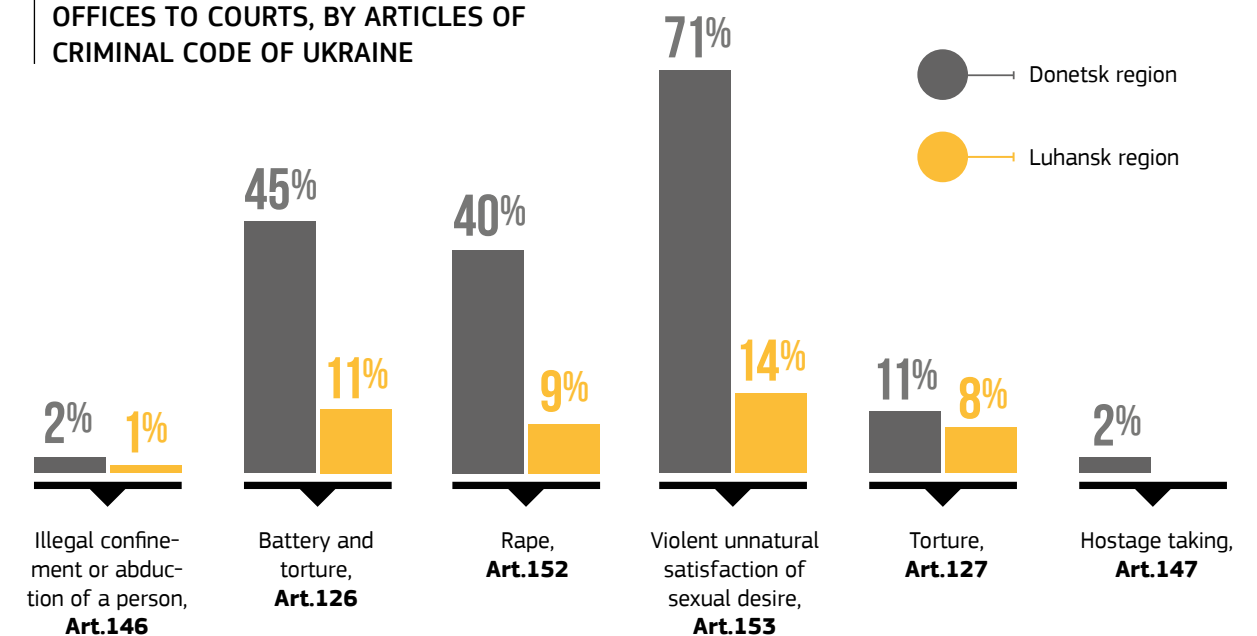
The necessity to investigate crimes committed by Ukrainian military in the zone of ATO has been highlighted on many occasions. In particular, in 2014 the ombudsperson Valeriya Lutkovska stated that some volunteer battalions violated the Ukrainian legislation and such cases should be investigated. Amnesty International and Human Rights Watch in their reports also drew attention to human rights violations committed by some Ukrainian military units. Nevertheless, we have to admit that the investigation of crimes committed by Ukrainian military in the zone of ATO can hardly be characterized as effective and impartial.

In a response to request for public information from UHHRU, the General Prosecutor's Office of Ukraine reported, that between April 2014 and December 2016 the following number of people were prosecuted for crimes committed in Donetsk and Lugansk regions:

- 45 law enforcement officials and 2 servicemen under the Art.146 of the Criminal Code of Ukraine "Illegal confinement or abduction of a person";
- 1 law enforcement official under the Art.153 of the Criminal Code of Ukraine "Violent unnatural satisfaction of sexual desire";
- 4 law enforcement officials under the Art.154 of the Criminal Code of Ukraine "Compulsion to sexual intercourse".

The majority of servicemen and law enforcement officials (41 persons), prosecuted under the article "Illegal confinement or abduction of a person" were prosecuted for crimes committed in Lugansk region. It is likely that most of them were members of police unit "Tornado". Over the entire period, only four law enforcement officials and no servicemen were prosecuted under this article Donetsk region.

### THE SHARE OF CRIMINAL PROCEEDINGS, TRANSFERRED BY THE PROSECUTOR'S OFFICES TO COURTS, BY ARTICLES OF CRIMINAL CODE OF UKRAINE



We were informed that the General Prosecutor's Office of Ukraine does not record separately the crimes, committed by military and law enforcement under some other articles, including Art.127 "Torture" and Art.438 "Violations of the law and customs of warfare". This practice of selective reporting precludes the possibility of real public control over the investigation of potentially high-profile cases.

The investigation is slow not only in case of crimes, committed by Ukrainian side. The chart above shows the share of criminal proceedings transferred by the prosecution to courts<sup>29</sup> regarding all crimes committed in Donetsk and Lugansk regions from April 2014 to December 2016 under certain articles of the Criminal Code of Ukraine. In particular, it includes crimes committed by the separatists and crimes, not related to the military conflict itself. We exclude the proceedings, closed under the paragraphs 1, 2, 4 and 6 of Art.284 of the Criminal Procedure Code of Ukraine<sup>30</sup>. One can notice, that the under Art.146 of the Criminal Code of Ukraine (Illegal confinement or abduction of a person) only 2% and 1% of criminal proceedings concerning crimes committed in the Donetsk and Lugansk regions, respectively, were transferred to courts. Only in the Donetsk region 1464 proceedings were initiated under this article<sup>31</sup>. The proportion of cases

investigated under Art.127 of the Criminal Code of Ukraine (Torture) is slightly higher: 11% and 8% of cases were transferred to courts, respectively. However, surprisingly few criminal proceedings were initiated under this article: only 27 in both regions over the entire period.

The share of crimes, investigated by Prosecutor's Offices under articles related to beatings and gender-based violence is significantly higher. However, it is probable that many of the crimes that fall under these articles were not related to armed conflict. In addition, over the entire period no more than 101 crime was registered under each article (Articles 126, 152, 153 of the Criminal Code of Ukraine) in each region.

The reason for the slow investigation of crimes committed by supporters of "LPR/DPR" may include the inability to bring the suspects to justice physically. However, in the case of crimes committed by Ukrainian side, the law enforcement agencies possess all the necessary powers, mechanisms and procedures for effective investigation. Therefore, the slow progress of investigation casts reasonable doubt concerning the resource availability and effectiveness of the Prosecutor's Offices.

<sup>29</sup> We included the cases, transferred to the court with indictment, motion for exemption from criminal liability or motion for application of compulsory medical or correctional measures.

<sup>30</sup> Where the prosecutor established the absence of offence or the absence of corpus delicti, where a verdict was already present, or a suspect died.

<sup>31</sup> See the total number of proceedings initiated under each article in Donetsk and Lugansk regions in the "Annexes" section

# International liability for war crimes

According to the Rome Statute of the International Criminal Court, individuals can be held criminally liable in several cases:

- If a person perpetrated a crime individually, jointly with another person or indirectly, through another person, regardless of whether that other person is criminally responsible<sup>32</sup>. Leaders and organizers, who controlled or made a significant contribution to the commission of a crime, can fall under the definition of "perpetrator" regardless of whether they committed a crime physically.
- If a person ordered, solicited or induced the commission a crime, which occurred or was attempted<sup>33</sup>. Instigation of a crime here means physical or psychological acts or nonfeasance, related to the commission of an international crime<sup>34</sup>.
- If a person facilitates the commission a crime by aiding, abetting or otherwise assisting in its commission or its attempted commission, including providing the means for its commission<sup>35</sup>.
- If a group of persons, acting with a common purpose, contributes to the commission or attempted commission in any other way<sup>36</sup>.

Individual criminal liability for the order requires hierarchical relations of power, although this relationship may not be apparent. Their existence can be proven by means of circumstantial evidence<sup>37</sup>. The superior can be brought to justice even if a person, who committed a prohibited act, did not receive a direct order from him/her. However, the superior should be informed of the substantial likelihood that a crime may be committed in order to face criminal liability<sup>38</sup>.

<sup>32</sup> ICC, "The Prosecutor v Thomas Lubanga Dyilo, "Decision on the Confirmation of Charges", ICC-01/04-01/06" 29 January 2007

<sup>33</sup> The Rome Statute of the ICC, Art.25 <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

<sup>34</sup> ICTY, "The Prosecutor v. Blaskic, Judgment, IT-95-14-T, 3 March 2000", 280; ICTY, "The Prosecutor v. Krstic, Judgment, IT-98-33-T, 2 August 2001", 601; ICTY, "The Prosecutor v. Kvočka et al., Judgment, IT-98-30/1-T," 2 November 2001", 252.

<sup>35</sup> The Rome Statute of the ICC, Art.25 <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

<sup>36</sup> Ibid

<sup>37</sup> CTY, Case "The Prosecutor v. Blaskic, Judgment, IT-95-14-T," 3 March 2000, 281

<sup>38</sup> Ibid, 282

## LIABILITY OF COMMANDERS AND SUPERIORS

According to the Rome Statute of the International Criminal Court, military commander or person acting as a military commander is criminally liable for international crimes committed in two cases.

Firstly, such person is criminally liable for crimes committed by forces under his/her effective command and control, or effective authority and control<sup>39</sup>. Effective command and control can be proven by means of his/her rank, which indicates the power to give orders, the capacity to ensure compliance with orders, ability to send forces where hostilities take place, the ability to promote, replace, remove or discipline and so forth.

Secondly, a military commander is criminally liable for international crimes committed because of his/her failure to exercise control over subordinates properly<sup>40</sup>. In order to be brought to justice in this case it should be shown that the commander:

- knew or should have known that the forces were committing or were about to commit crimes<sup>41</sup>. Such knowledge can be proven by the number of unlawful acts, their volume or spread, the time period during which these acts occurred, the type and number of forces involved, the available means of communication, the location of the commander and the location where the crimes were perpetrated, presence of organized structure and reporting or monitoring.

- failed to take all necessary and reasonable measures within his/her power<sup>42</sup> to prevent<sup>43</sup> or repress<sup>44</sup> commission of crimes or to submit the matter to the competent authorities for investigation and prosecution of the perpetrators<sup>45</sup>. Thus, the necessary and sufficient measures are evaluated according to the authority of the commander and his/her actual ability to command.

The duty of the commander to prevent the commission of crimes includes ensuring that the forces received adequate training in international humanitarian law; creating the conditions in which military operations are conducted in accordance with the international law; issuance of orders aimed at bringing the relevant practices in line with the law and customs of war; adoption of disciplinary measures to prevent the commission of crimes.

International law requires the commanders to be proactive on the issue of gathering information about the behavior of their subordinates<sup>46</sup>. Therefore, it is not necessary to show a direct causal link between nonfeasance and commission of a crime in order to bringing the commander to justice. There is only a need to prove that the commander's nonfeasance increased the risk of commission of a crime<sup>47</sup>.

<sup>39</sup> ICC, case "The Prosecutor v. Jean-Pierre Bemba Gombo, Decision Pursuant to Art.61(7)(a) and (b), Pre Trial Chamber II, ICC-01/05-01/0815", 15 June 2009, 417

<sup>40</sup> Ibid, 429

<sup>41</sup> Ibid, 429

<sup>42</sup> Ibid, 443

<sup>43</sup> Ibid, 437

<sup>44</sup> Ibid, 439

<sup>45</sup> Art.28 of the Statute of ICC, described as interpreted in the case "Prosecutor v. Jean-Pierre Bemba Gombo Decision Pursuant to Art.61(7)(a) and (b), Pre Trial Chamber II, ICC-01/05-01/0815", 15 June 2009, 407

<sup>46</sup> ICC, "The Prosecutor v. Jean-Pierre Bemba Gombo, Decision Pursuant to Art.61(7)(a) and (b), Pre Trial Chamber II, ICC-01/05-01/0815" 15 June 2009, 433.

<sup>47</sup> Ibid, 425.

Taking into account the situation described above, the following persons can be criminally liable under the Rome Statute of the International Criminal Court for alleged war crimes, described in this report:

Name	Position	Period
Nom de guerre «Doc»	Combatant of the battalion of the Ministry of Internal Affairs "Azov"	July 2014
Nom de guerre «Butcher»	Combatant of the battalion of the Ministry of Internal Affairs "Azov"	July 2014
Andriy Biletskyi	The Head of the battalion of the Ministry of Internal Affairs "Azov"	From 5 May 2014
Andriy Filonenko	The commander of special unit of the Ministry of Internal Affairs "Shakhtars'k"	From June 2014
Yevhen Ptashnyk	The head of the assault battalion of the Armed Forces of Ukraine "Aidar"	From 25 November 2014
Oleksandr Rachevskiy	Acting commander of the regiment "Dnipro-1"	From May 2015

In addition, depending on the scope and objectivity of the investigation and completeness of the obtained evidence, the charges can be further addressed not only to the perpetrators and their superiors, but also to the senior commanders:

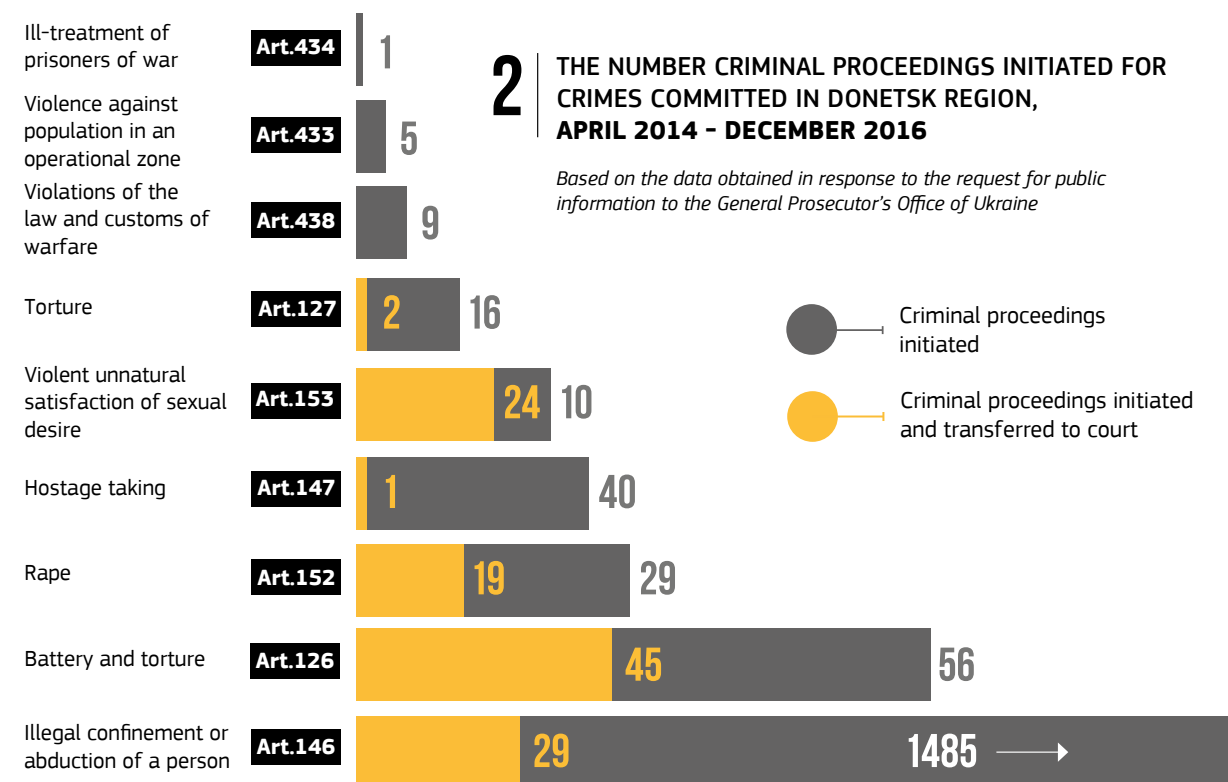
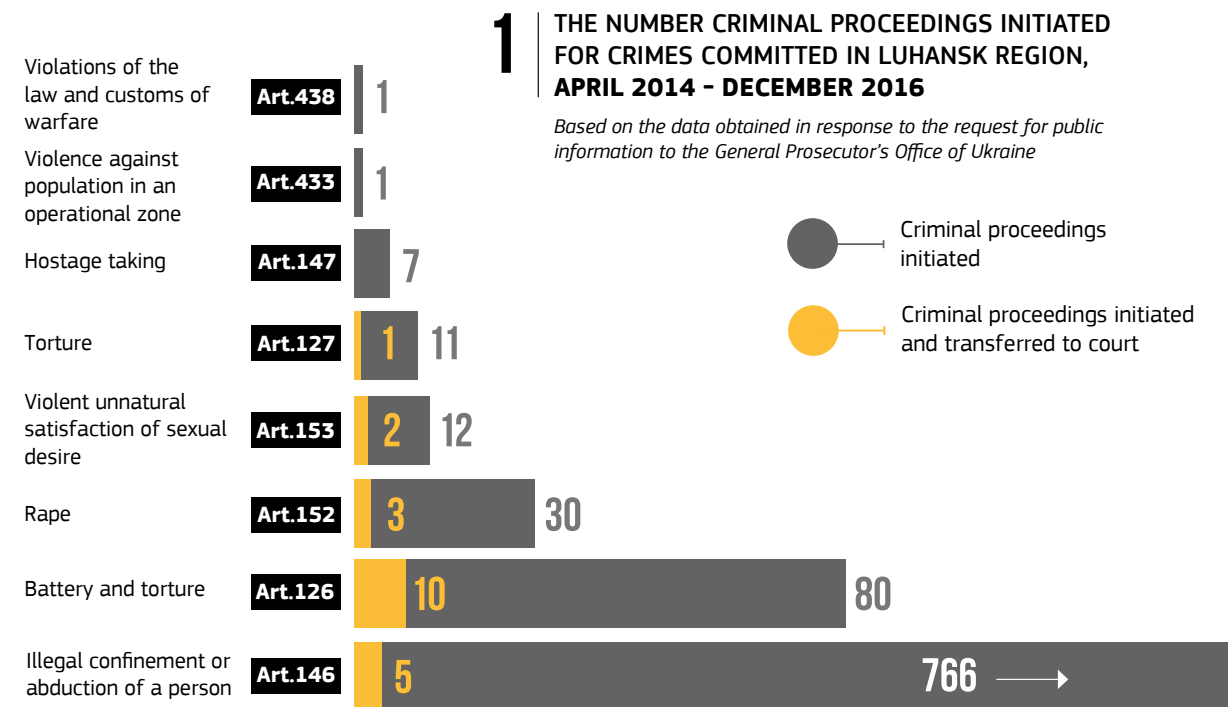
Name	Position	Period
Arsen Avakov	Minister of Internal Affairs	From 27 February 2014
Valeriy Geletey	Minister of the Defence of Ukraine	3 July – 14 October 2014
Stepan Poltorak	Minister of the Defence of Ukraine	From 14 October 2014
Anatoliy Pushnyakov	The commander of the Land Forces	6 May 2014 – 13 January 2016

# Recommendations

## TO THE GOVERNMENT OF UKRAINE, MINISTRY OF INTERIOR, GENERAL PROSECUTOR OF UKRAINE, AND SECURITY SERVICE OF UKRAINE:

1. To accelerate the formation of an interagency working group, involving public authorities, law enforcement agencies and international organizations, aimed at documenting and investigation of violations of human rights and international humanitarian law in the temporarily occupied territory of Ukraine and in the zone of ATO.
2. To take measures for isolating the crimes, committed by the Armed Forces and law enforcement officials in the ATO zone, in the general statistics on recorded and investigated crimes.
3. To conduct a national discussion on the civil security sector reform and development of the policies and strategies to protect the right to life of civilians during military operations and emergencies.
4. To ensure thorough, effective and impartial investigation of all allegations of illegal detention, torture and extrajudicial executions committed by Ukrainian units in the zone of ATO and to bring the perpetrators to justice.
5. To increase the capacity of law enforcement personnel involved in documenting and investigation of war crimes and violations of international humanitarian law through specialized educational programs.
6. To make sure that soldiers and law enforcement officials performing tasks in the zone of ATO are familiar with the provisions of international humanitarian law and human rights law, as well as the provisions of the Criminal Procedure Code concerning the rights of detainees.
7. To suspend all persons suspected of having violated human rights law and international humanitarian law from their duties in the zone of ATO. To discharge all persons, who have been proven guilty of violating human rights and international humanitarian law, from the Armed Forces of Ukraine and law enforcement agencies.

# Annexes





### **Ukrainian Helsinki Human Rights Union Documentation Center**

is a division of UHHRU, founded in 2016. Documentation Center creates a modern, secure and regularly updated database of human rights violations, committed in the zone of armed conflict in Eastern Ukraine. The Center supports the peacebuilding processes and aims to help victims seek justice and redress. The Center is open to any inquiries. The main activities of the Center are:

- Documenting, verification and analysis of information on violations of human rights and international humanitarian law in the area of armed conflict;
- Reconstruction of events;
- Support for all victims of the conflict, regardless of their nationality and official status;
- Cooperation with law enforcement bodies.



### **Kharkiv Human Rights Protection Group**

is a human rights organization that was registered as a legal entity in November 1992, although it had existed as the human rights protection wing of the Kharkiv office of "Memorial" from 1988, and some members of the group had been active in the human rights movement from the 1960s to 1980s. The Group is active in three main areas:

- assistance to individuals whose rights have been violated, and carrying out investigations into cases of human rights violations;
- human rights education and promotion of legal awareness through public actions and publications;
- analysis of the human rights situation in Ukraine (particularly, with regard to political rights and civil liberties)

The Group has developed a human rights network, which connects local human rights organizations throughout Ukraine. It serves as resource and information center.



### **Non-governmental organization "Truth Hounds"**

is a human rights organization, which was established for monitoring of the human rights situation in conflict zones, documenting of war crimes and crimes against humanity, for protection of human rights defenders and consulting on security issues. Currently, the organization is working in two countries: Ukraine and Georgia. The team is involved in documenting of the war crimes in the Donetsk and Lugansk regions, as well as in gathering evidence of persecution of Crimean Tatars in the occupied peninsula. The organization mainly works under the standards of gathering evidence of the International Criminal Court in The Hague.