

2022 Index on Torture

Ukraine

In 2022, the situation with the prohibition of torture in Ukraine was significantly affected by the war with the Russian Federation that continues to this day. The following is a brief overview of the factors and trends that occurred in this historical period.

The indicator of openness and access to public information declined significantly. At the onset of the war, access to state registers was restricted. In particular, the register of judicial decisions was not accessible. Subsequently, while the overall access was restored, certain categories of cases, particularly those with potential implications for national security, were either removed from the judicial register, or classified, or never included in the register in the first place. At the same time, there is a lack of clarity regarding the criteria used to determine whether or not certain information is likely to pose a threat to security, and the total number of cases which got classified remains unknown. Reports alleging torture are registered separately by various law enforcement units, including police departments and subdivisions of the State Bureau of Investigations and the Security Service of Ukraine. No aggregate statistics of such reports are collected or maintained. Only the total number of criminal cases initiated under Article 127 "Torture" of the Criminal Code of Ukraine is known. In 2022, there were 68 such cases, of which 16 cases were sent to court and in 7 cases, the perpetrators were convicted and sentenced.

The situation is similar as far as photo and video documentation are concerned. Currently, law enforcement authorities have the legal power to arrest individuals for attempting to record a video of the authorities' actions, including evidence of official misconduct. The authorities can justify the arrest by invoking the ongoing war in the country and suggesting that those taking pictures may be acting on behalf of enemy intelligence or are trying to discredit law enforcement agencies in the eyes of society.

Regrettably, there is no available information regarding either the number of torture complaints or the number of complaints filed by incarcerated individuals. Centralized records of such information are either not kept or not publicly accessible.

In 2022, a new Commissioner for Human Rights was appointed by the Verkhovna Rada, but the work of the National Preventive Mechanism (NPM) continued without interruption. By adopting the "Ombudsman+" format with active involvement of the public, the NPM continued its work and conducted visits to places of detention. Regrettably, the practice established by the end of 2021, which allowed monitors from the public to visit places of detention, has not yet been reinstated. There is hope, however, that this practice will resume in 2023.

A considerable number of personnel in the Prosecutor's Office and investigative bodies were engaged in investigating war crimes. As a result, both law enforcement officers and the public shifted their focus towards documenting cases of torture, child abductions, and other crimes committed by the military and state representatives of the Russian Federation. Due to the substantial increase in the size of the Armed Forces of Ukraine and the added responsibility of the State Bureau of Investigations (GBR) to conduct criminal investigations into unauthorized abandonment of military units, road accidents involving military vehicles, and military personnel refusing to follow orders, the GBR and Prosecutor's Office investigators were overwhelmed with the high number of cases. However, incidents such as excessive use of force or improper treatment of servicemen by military commanders tend to immediately gain public attention in Ukraine and prompt swift legal action from law enforcement agencies.

Positive trends should also be acknowledged. Thus, in 2022, amendments were approved to Article 127 of the Criminal Code of Ukraine, concerning the responsibility for torture. The new wording of the article aligns more closely with the requirements of the relevant conventions.

Now the article is worded as follows:

Article 127 "Torture" in the Criminal Code of Ukraine:

1. Torture, i.e. intentional infliction of severe physical pain or physical or moral suffering through acts such as beating, tormenting, or other violent means, carried out with the intention of coercing the victim to engage in acts against their will, which includes extracting information or confessions from the victim or a third party, punishing them or a third party for acts committed or suspected to have been committed by the victim or a third party, or with the purpose of intimidation or discrimination of the victim or others

- carries a penalty of imprisonment ranging from two to five years.

2. The same acts, when committed repeatedly or by prior agreement by a group of individuals, or motivated by racial, ethnic, or religious intolerance,

- carry a penalty of imprisonment ranging from five to ten years.

Part 3 was added which defines agents of the State as a specific category of perpetrators:

3. Acts described in part one or two of this Article, when committed by a state agent, including a foreign state agent,

- carry a penalty of imprisonment ranging from seven to twelve years, with a ban on holding certain positions or engaging in certain activities for up to three years.

Note. 1. For the purposes of this Article, a state agent should be understood as an official or as an individual or a group of individuals acting at the instigation, with the knowledge, or with the tacit consent of the State. 2. Agents of a foreign State, as referred to in this Article, should be understood as individuals acting as civil servants of a foreign State or serving in the armed forces, police, state security or intelligence agencies, or holding positions in these or any other state bodies or local self-government bodies of a foreign State in accordance with its legislation; individuals acting upon the orders of such persons, and also representatives of irregular illegal armed formations, armed gangs, and mercenary groups that are created, directed, managed, and financed by the Russian Federation; representatives of the occupational administration of the Russian Federation, including its state bodies and structures responsible for the governance over the temporarily occupied territories of Ukraine; and representatives of self-proclaimed bodies controlled by the Russian Federation that have usurped the exercise of power functions in the temporarily occupied territories of Ukraine.

Positive changes have been made not only to the wording of this article but also to the provision concerning the statute of limitations. Torture has been added to the list of crimes for which there is no exemption from criminal liability due to the expiration of the statute of limitations.

In 2022, despite a significant number of Ukrainians being forced to leave the country, human rights activities continued. Human rights organizations carried on their work and produced a number of reports that proved instrumental in helping law enforcement agencies investigate cases of torture and ill-treatment.

High-profile trials in torture cases

In 2022, the "Kagarlytsky case" trial continued.

The incident occurred on 23 May 2020 in a location outside Kyiv, where two police officers assaulted, beat, and repeatedly raped a woman who had been summoned to the police station as a witness in a shoplifting case. According to the victim, the officers continued torturing her throughout the night: she endured physical beating, was forced to wear a gas mask, had intimidating shots fired above her head from a service pistol, was handcuffed, raped, and received threats towards her family.

In the morning, the woman was released from the police station and filed a crime report. The case was taken up by the State Bureau of Investigations (GBR) and overseen by the Office of the Prosecutor General of Ukraine.

Six months after the events described above, on 16 November 2020, the Office of the Prosecutor General announced that the investigation had been completed. During their investigation into this case, the authorities uncovered several additional instances in which detainees had been tortured at the same police station.

In January 2020, in an attempt to force two individuals to confess to thefts, police officers drove them around the town in the trunk of a car, subjected to physical beatings, and tortured with electric shocks.

Another case took place in May, when a detainee was beaten and sustained injuries of moderate severity.

Despite the ongoing war, the proceedings into this case continued and remained in the public spotlight, and by the end of 2022, the case reached its final stages.*

* - in 2023, prior to the release of this report, the trial was completed. The court found two former police officers guilty and sentenced them to 11 years in prison. One of them served as the head of the criminal police sector, and the other was an operative at the time of the events.