

**Presentation by Expert on Legal Issues of Public Organization****"Antifascist Human Rights League" SVETLANA NOVITSKY****At the Plenary Session****OSCE Human Dimension Implementation Meeting****23 SEPTEMBER 2019 (3 pm - 6 pm)****(SUBJECT: THE RULE OF LAW)**

The **"Antifascist Human Rights League"** monitors facts of violations of rights and freedoms in Ukraine, in particular, the incidents in matters referring to the rule of law and access to justice.

Following the amendment of criminal law and criminal procedure (I told about this in the first part of my speech), a "conveyor of Ukrainian justice" on bringing of all dissatisfied with the policy of new government to justice, started working. People faced absurd and illegal charges according to one of the articles under section "Crimes against national security of Ukraine" (or several articles at once).

They held people in custody, contained for months and sometimes years in pre-trial detention, and then, realizing an inadequacy of charges and court's inability to confirm the suspect's guilt, offered these people a "deal with a prosecutor" - guilty plea and a conditional sentence with release from the detention center (or exchange of prisoners with the DPR or the LPR – the territories of Donbass not under control of the state).

At the same time, law enforcement agencies applied both physical and psychological pressure to these people, forcing them to admit their guilt for crimes they never committed in reality.

They used other types of psychological pressure on innocent citizens, which, according to the International Convention are equal to torture. And this is a topic of our discussion at this plenary session.

Thus, in absence of the Criminal Procedure Code of Ukraine norms setting a time duration of a trial, government forces dissidents (not ready to admit their guilt) to spend years on "proving" their innocence while staying behind bars in a pre-trial detention center. At the same time, courts illegally - in case of "no consent" to plead guilty and make a deal with a prosecutor – and intentionally appoint court hearings once in 2 months, only to extend a period of detention.

For example, such are the actions of Rivne City Court of Rivne region in case of *Granitny Y.S, and Kleynosa Y.G.*, accused of attempted state treason and calls for a change of the boundaries of the territory or the state border "in violation of procedure established by the Constitution of Ukraine".

Their crime consists only of accusation in conduction of rallies dubbed "Legalization of amber extraction". Residents of Rivne region repeatedly asked the government to make an order of the barbaric, illegal extraction of amber in their area, which results in an ecological disaster in the area they live in. But authorities cannot cope with so-called "Amber Mafia", and therefore the people who try to protest and to use their right to peaceful assembly are brought to criminal liability and labeled "the traitors of Ukraine".

The indictment against *Granitny Y.S, and Kleynosa Y.G.* states that they carried out their activities (meetings) according to directives received from representatives of Russian President's administration and FSB. The indictment against these citizens went to court in March 2018, but court had not actually started the proceedings yet: for more than a year, the judge appoints meetings once every 2 months, prolonging a period of detention of the accused, who spent almost 2.5 year behind bars.

More than 650 court verdicts delivered according to Article 110 of the Criminal Code of Ukraine contain no more than a dozen real sentences, while the others represent a "court approved agreement with prosecutor in the form of a verdict". According to such "verdicts" the accused starved by detention in the remand prison were forced to admit their guilt for crimes they never committed.

For example, journalist *Vasil Muravitsky* is being brought to criminal liability for his journalistic activities simultaneously on four Articles of the Criminal Code of Ukraine - for state treason; for actions aimed at changing of the borders of Ukraine; for inciting ethnic hatred; for assisting a terrorist organization. I will not burden the audience with my interpretation of the Criminal Code, article by article. All the content of these crimes the Ukrainian Security Service SBU found in 11 articles on socially relevant topics published by various electronic media. My client is accused of writing these articles.

For example, for one and the same article that describes events of 1943 in Volyn region (Ukraine), *Vasyl Muravitsky* is charged under three articles of the Criminal Code of Ukraine - state treason (he allegedly acted to the detriment of sovereignty and national security of Ukraine by writing his article and providing assistance to a foreign state - probably Poland as the indictment contains no state's name?!); the content of this article somehow can affect at revision of Ukraine's borders in violation of procedure established by the Constitution; and, besides that, the content of this article incites ethnic hatred (probably with Poles, too).

In this case, a judicial investigation against *Muravitsky* lasts for more than two years and *Muravitsky* spent almost the entire period of pre-trial investigation and trial in custody.

The same refers to media-expert and blogger *Pavel Volkov*. Initially he received a suspicion note that – according to the Criminal Code - stipulated a life sentence. He faced the suspicion of a committed crime for writing articles published in the Internet and for production of commercials. In 2014-2015 *Volkov* stayed in the city of Donetsk from time to time. *Volkov* filmed the city with traces of destruction and accompanied his videos with citations of writers and philosophers (Saint-Exupery, Freud, Tolstoy, and others) about war.

According to investigation conducted by the Security Service of Ukraine SBU, *Volkov's* videos and articles resulted in mass death of people – of several thousand people. Later, realizing the absurdity of charges against *Volkov* for suspicion of mass death of people because of his actions, investigators reclassified this crime according to a less severe section of the article of the Criminal Code of Ukraine, stating that he "colluded with unknown persons in unidentified place" to change borders of Ukraine and to assist a terrorist organization dubbed DPR.

To date *Volkov* is the only Ukrainian journalist-blogger brought to criminal liability for writing articles and shooting videos for mass media outlets and blogs, whom court fully acquitted of all charges, including assistance to a terrorist organization. Primary court of appeals upheld the acquitting verdict in *Volkov's*.

At the same time, *Volkov* – guilty of nothing - spent more than 13 months in custody. *Volkov* got no apology or compensation for material and moral damages.

I, as a lawyer who represented *Volkov's* interests in court, want to note that this category of cases features not only absurdity of indictments, but gross violations of rights of the accused in criminal proceedings too. Investigators extract evidence without court permissions by illegal tapping of telephone conversations, by opening up of personal correspondence electronic mails and in private correspondence in social networks, by illegally collecting sensitive information and by searches carried out in violation of the procedural law and with use of force.

Unfortunately, judges during trials as a rule do not react at such gross violations of procedure committed by investigators, and this fact is visible in guilty verdicts.

However, in course of *Volkov* case review in court violation of constitutional rights in his case were so egregious that court was forced to declare more than 70% of collected evidence inadmissible or collected illegally and refused from reviewing them. The court of appeals agreed with the trial court in this aspect and upheld the acquitting verdict.

Ukrainian courts - in violation of Constitution and international law - introduced an illegal practice of re-examination of the indictments previously returned by a court verdict to prosecutors. Courts of appeals uphold return of indictments to prosecutors. So, in case of *Koretskaya and Orekhova* courts of appeals canceled verdicts of the first instance court as illegal twice, but after that the indictment went back to the prosecutor.

The prosecutor - changing the date of signing and without any pre-trial investigation, without disclosure of evidence in case to the defense - forwarded the same indictment to a trial court on the same grounds and for the same "crime", crushing down the principle of law - "no one can be prosecuted twice for the same crime" – and re-examined the case. At the moment, the inter-district court of Khmelnytsky re-examines case of *Koretskaya - Orekhova* for the third time. This is inadmissible violation that contradicts the European Convention on Human Rights. In the same manner, court decided to re-examine the case of the well-known journalist *Ruslan Kotsaba* for the second time after return of indictment to the prosecutor by the court on the same charges that the previous indictment contained.

I ask the organizers of the Meeting to add all listed violations of access to justice in Ukraine to the General Resolution that will be adopted upon completion of this meeting.

All participants who wish to get the monitor report on violations of human rights and freedoms in Ukraine and on access to justice can apply to me after completion of the Plenary Meeting.