

**SEVERAL ASPECTS OF IMPLEMENTATION IN UKRAINE OF THE  
POSITIVE EXPERIENCE OF THE FOREIGN COUNTRIES TO PREVENT  
TORTURE AND OTHER ILL-TREATMENT OF PEOPLE IN POLICE  
ORGANS**

*Paper analyzes the state of human rights in the activities of the employees of Internal Affairs of Ukraine, studies and generalizes experience of foreign countries in the prevention of cruel or other inhuman treatment with persons in police activities and gives proposals for the improving the prevention of such actions in the light of positive foreign experience.*

**Keywords:** *torture, cruel or other inhuman treatment with persons in police activities, prevention measures, the introduction of a positive experience.*

Prohibition of torture is a peremptory norm of international law and, as it is constantly emphasized in his practice of the European Court of Human Rights (ECHR), "reflects one of the fundamental values of a democratic society" [1, pp. 791–801]. Guarantee of the human right to life and to the protection from cruel or inhuman treatment enshrined in all major international instruments, ranging from general principles of international law, international instruments of common law to international treaties at the universal and regional levels. Ukraine, being a party to the International Covenant on Civil and Political Rights, the UN Convention against torture and the European Convention for the protection of human rights and fundamental freedoms (hereinafter referred to as the Convention), is obliged to guarantee the right not to be the subjects of torture and ill-treatment on the part of public servants. This right is protected by the Constitution: "no one may be subjected to torture, cruel, inhuman or degrading, his dignity, treatment or punishment" (art. 28). Meanwhile, complaints about torture and ill-treatment with

the people in the activities of the employees of the bodies of Internal Affairs of Ukraine (hereinafter – OIA) happen quite often.

So, on November 20, 2012 in OIA were registered 2627 statements, messages and identified violations of rights and freedoms of citizens in activities of OIA, out of which 71 messages relating to the Commission of torture by the police, and 1316 – cases of beating. For 11 months. 2013 OIA registered 2447 such appeals and violations, including 1,187 complaints torture, beating and wrongful use of physical force by police. However, the statistics of human rights organizations indicate that the scale of violence in Ukraine is considerably larger. Only by network reception room of the Ukrainian Helsinki Human Rights Union were registered 159 complaints of torture and other forms of bad behavior (November 20, 2012) [2].

Monitoring of unlawful violence in the organs of Internal Affairs, held in the Kharkov Institute of social studies in 2011, showed that the estimated number of victims from poor handling by the police is about 1 million of persons responsible indicators 2004. A comparative analysis of these studies in 2004–2011 shows a drop in the level of tolerance of the population to cases of torture or other ill-treatment in police stations. Today, the use of torture and unlawful violence does not condone and deem invalid already 78% of the population [3]. In the 2003–2013 by the European Court of human rights rendered 112 solutions for cases against Ukraine, in which the plaintiffs pointed to violations of the provisions of art. 3 of the Convention "The Prohibition of Torture". Among all rendered decisions in 47 is definitely breaking the material aspect of the art. 3 (prohibition of torture, inhuman or degrading treatment or punishment, dignity) of the Ministry of Internal Affairs of Ukraine.

It should be noted that among the main ways to abuse the bodies of Internal Affairs and the prohibition against torture, inhuman or degrading treatment or punishment, the dignity, the ECHR states: child abuse (assault, causing bodily harm, psychological pressure) – 59,65%; improper conditions in prison detention – 22,81%; failure to provide proper medical care – 15,79%; causing moral and physical suffering is 1.75% [4]. Some issues related to the problems of ensuring

the legitimacy, the rights and freedoms of man and citizen in the activities of the bodies of Internal Affairs of Ukraine (hereinafter – ATS) at different times became a subject of study by many famous scientists. In particular, such scientists as V. Averyanov, S. Altukhov, O. Bandurka, Y. Bielousov, A. Varigin, p. Vorushilo, D. Kobzin, Y. Kravchenko, K. Levchenko, A. Martynenko, O. Novakov, V. Opryshko, A. Perepelitsa, V. Pietkov, D. Polonsky, V. Pogorilko, V. Soboliev, A. Chernousov, Y. Shemshuchenko, K. Shkarupa, O. Yarmysh and others.

During last five years a number of theses defended in Ukraine (K. Zadoya, K. Katerinchuk, V. Konchakovska, T. Slutska, G. Hushev), devoted their researches of criminal-legal and criminological aspects of the prevention of torture and crimes in the sphere of service activity. However, to the criminological studies of crimes determination and measures on their prevention are devoted the researches of S. Shulgunova (1999), O. Novakov (2003), V. Kovalenko (2009), but they were limited to certain types of crimes and related to the specific categories of workers. Comprehensive theoretical-criminological analysis of crimes among employees of OIA Ukraine was carried out only in the work of A. Martynenko "Crimes among OIA Employees of OIA: Their-determination System and Prevention" (2007). In this work the author has provided kriminologičnu description of torture and hard treatment of ATS with citizens. Theory and practice of police use of EU experience in an administrative activity of the bodies of Internal Affairs of Ukraine considered the work of d. p. Kalaânov (2010).

However, under modern conditions in Ukraine there were virtually no studies directly dedicated to the study of the positive experience of the foreign countries to prevent torture and other ill-treatment with the people in the activity of police bodies. Named the circumstances and have caused the relevance of chosen for research topics and define the purpose of this article is to analyze the extent of illegal violence in activities of OIA and taking foreign experience to develop and propose measures aimed at the preventing of the facts of torture and other ill-treatment of persons during the performance of their official duties. Considering the positive experience of foreign countries in the field of prevention of torture, cruel or inhuman treatment of

people in police activities, in our opinion, it is worth examining the experience of those countries that have shown an example of the success of the police reform that is defined by a high level of trust to the police. Such countries include the United States, Great Britain, Georgia, Czech Republic, Japan. Three of them (Georgia, Czech Republic, Japan) made a reforming their law enforcement in the period of profound social upheaval and transformation.

1. United States. Compliance of legality in the activities of law enforcement is a traditional topic research, primarily for American scientists and advocacy groups. High-profile scandals that regularly occurred among police United States in the 1990s, demonstrated the spread in police departments as a wide range of offenses: bribery and corruption, the drug trade, participation in organised crime, racism. All these negative manifestations, according to numerous government commissions were directly related to facts of roughness, disorder overrunning police powers [5]. Even after a series of progressive police reform is the violence of law enforcement officers in conjunction with racism remains one of the most urgent problems in the functioning of criminal justice of the United States, which repeatedly helps during the next exacerbation of relations between police and the Afro-Spanish-American part of the population of the United States [6]. The original record was New Orleans, where in 1993–1997, pp. at least 50 police officers (4%) were arrested for committing murder, note sexual assault and looting [7, pp. 32–35]. According to specialists of Human Rights Observance, the problem was the low salary of police New Orleans, that specified not only the high level of delinquency, but also the systematic corruption (at least 10-15%). Considering the cases of an excessive use of force by police in the United States, including racial motives, the respective State institutions used a number of precautions. In order to prevent violations of the law at the legislative level is the responsibility of management for the actions of subordinates. Each Police Department created the internal control departments, which constantly reshuffling happens to employees not managed to "grow into" ties. In addition, in every branch of police showed up "secret agent", which is about all the violations. Police leadership must regularly report tthe directions of police activities, during

which can be tolerated corruption actions. Police activities in the United States involve the public. Together with the official police the streets patrolled units of voluntary police. They issued uniforms and patrol car. It is believed that this admission removes a psychological barrier between police and citizens. Only in New York for 40 thousand. Of police accounted for more than 4 thousand. voluntary volunteer policemen.

It has also been taken to strengthen the professional selection, because numerous problems complied with American police law with drawbacks of staffing. Mandatory checks of candidates for service to police was partly implemented only in 1997, together with the adoption of professional standards. By that time even in the metropolitan police service, a biography of the candidate for his behavior in everyday life, moral qualities, convictions in him and his relatives perevirâlis' only incomplete [6]. Today, in order to become a police officer, you must meet certain requirements, including having no doubt NET biography and finish Police Academy. To rise to the position of the investigator to work as a patrol not less than three years, establish itself in service, make a complicated qualifying exams. Requirements for the next increase is similar. Any achievement will not allow staffing police lead the authorities to police the big city or the State. On these posts the executive bodies of the cities appointed exclusively by the civilians. In the United States were established civil regulators, whose activities are financed from local budgets. They review complaints of citizens on the police. Civil activists have the right to conduct its own investigation, and transmit reports submitted to the police, which takes the decision about punishment of subordinates. In New York, has a special number by calling 311, which can leave information about violations by the police. Assessment of the work of the police is based on the belief of citizens, which regularly surveys public about the effectiveness of the activities of the police. All innovations were augmented by the increase in the salaries of the policemen. Now, the salary of an ordinary employee, depending on the State ranges from 40 to 90 thousand. dollars a year (the patrol). On the position of detectives and chiefs of the departments, taking into account the premium and over the norm police officers earn up to 200 thousand.

dollars a year. In addition, they are paid medical insurance, mortgage credits and high pension: after 20 years of service – 50% of earnings, after 30 years in the amount of 75% of earnings. As a result, in 2008, a police officer, according to a nationwide poll trust the 73% of residents of the United States.

2. United Kingdom. Despite the transition to the service model of police, law and order and discipline in the police units in the UK remain on the agenda as the most polemical issue. However, unlike their American counterparts, British police, given the multi-ethnic society of the United States, receive significantly less reproach from citizens on the elements of racism in behavior – 3,6% of the total received in 2000–2001 pp. complaints [8, p. 63]. Aggressive behaviour as a reason for complaints encountered in British practice somewhat more often in 45.5% of cases, compared to 30,3% of "abuse of power" in the United States. However, it should be noted that to carry out a complete analogy between the specified indexes cannot be for two reasons. Firstly, the British police deployed without firearms, because of an aggressive behavior on their part can be expressed only in the use of special equipment for the protection of public order. Secondly, the distribution of the complaints by the citizens just two parameters – "rough, aggressive performance of official acts" and "illegal arrest", which is 34%, can serve as analogues of the American term "abuse of power". Taking into account these considerations, you can assume that the cases of excessive use of force are found in law-enforcement practice of the United States and the United Kingdom with the same frequency – 30–34% of cases of misconduct.

Reviewed provisions demonstrate the presence of almost identical problems in the development and activities of the police force, no matter which course was elected national Governments regarding the place and role of police in society today. American police, raising logistical burglar and sharing power staff found primarily with the problem of excessive aggressiveness of personnel and its lack of an open mind to work with representatives of the ethnic minorities. Attempts to establish various forms of public control are not only active resistance from the police, but also the difficulty of objective nature. Britons, directing major efforts to reorganize the

police force, provided the activities of law-not so much a punitive personnel how much spillover service character. Unlike the American policy of "zero tolerance", they delegated some of the fight against crime not only police but also to society in general. In this direction the Brits have progressed much more than other countries. However, for such a policy before the British public remain problems of insufficient level of "transparency" of police work and aggressive behavior of police [6].

3. Georgia. In post-Soviet Georgia has been one of the first places in the world according to the level of corruption and legal lawlessness. The main innovations began in 2004, when they were sent down the heads of all the power structures of Georgia. The bodies of the OIA fired 15 thousand. Police – the whole composition of the Georgian police. Three months later, the country lived without traffic police, and its new staff was recruited from scratch on a tight competitive basis. From 2,500 candidates were selected only 650. When taking on the job of new candidates passed psychological tests, developed by Western experts, which helped boost the average intellectual level workers took away psychologically resilient employees with unaggressive units. Cruel or otherwise inhuman treatment in activity of law enforcement (police) authorities in Georgia are quite often by seeking at the stage of pre-trial investigation. After the reforms in Georgia shows that participants in the process give in court, are a priority for screening, granted during the pre-trial investigation. Accordingly, it has become significantly less drives badly behave with people, forcing them thus ziznavatis' in the Commission of crimes. As a result of the reform the salary of police increased ten times (an average of 700 dollars, investigator salary is much higher – about 2000 dollars while the average salary in the country is about 200 dollars). An added bonus – premiums and medical insurance. Given the high level of unemployment in Georgia, the police service has become a prestigious occupation. Competition in the Police Academy is 50 people per place. According to polls, in 2011 the police trust 87% residents of Georgia [9].

4. Czech Republic. The Czech Republic went through decentralization, depoliticisation and a demilitarization of the police. The central apparatus of the Ministry of Internal Affairs conducts analytical expert work, legislative support, division of finance, issues of citizenship, migration, prevention of crime, and is responsible for managing and monitoring crime situation in the country. All the officials are civilians. Police activity from the activity profile are completely separated. In order to prevent abuse or other inhuman treatment of people in police investigations of criminal activity police entrusted the inspection of the Interior, which is subordinated directly to the civilian Minister of Internal Affairs. Introduced the constant reshuffling and increased salaries. Now the average salary policeman of

the Federal building in the Czech Republic is 31800 kronor (after payment of taxes – 20 – 25 000 CZK or 1000 Euro). On her size affect lifespan and similar post. Bonuses are subsidies on transportation and lodging, premium for night shifts. The average salary in the Czech Republic – 17–20 thousand. CZK, the unemployment rate is quite high. According to experts, the Czech police, decentralization is one of the best in the post-Soviet space. Level of trust of the population to police – 58% [9].

5. Japan. After a series of reforms carried out today a police system of Japan is based on a network of offices located in each prefecture (in Tokyo is a special city administration), with wide operational powers, but fully accountable to the National Police Administration. Police prefectures provide duty patrol, security on the roads, the work of the criminal police. The prefectures were divided into districts in which police departments created a subordinate headquarters kvartiram in prefectures. In General in the country now there are about 1250 of such "district departments". Prevent cruel or otherwise inhuman treatment of people in police activities, Japan is ensured by: the general steps of voluntary civic associations (at least every 300 th a resident of Japan is a member of such an association to promote the rule of law); adoption in 1981 of ethical police code, sustained in the spirit of the Samurai;

Keeping a constant control of the quality of the work of the police National Commission of public safety; the introduction of registration of persons against whom indicted of involvement in organized crime, corruption, violence. The fact of such registration to the media and is the reason for the establishment of further control over the behavior of a particular person and the sources of its profits. A separate law on combating corruption in Japan does not have this field supervise several indirect legislative acts, some of which are taken in the middle of the last century. The Criminal Code of Japan in 1907, the incumbent in the edition of 1995, contains a separate chapter dedicated to bribery. Giving a bribe is punishable by as much as making a person (even future) bribe, state prison for up to three years or a monetary fine [9].

1. Taking into account the stated above, offer a number of practical measures and organizational nature concerning the introduction in Ukraine of the positive

foreign experience to prevent torture, cruel or inhuman treatment of people in the activity of police bodies. In order to ensure the rights of detainees and of persons transported in appropriate conditions of their detention in special militia facilities and rooms for detainees and delivered; enhance the effectiveness of investigations into the facts of cruel or other inhuman treatment of people in police activities, we consider it necessary to take the following measures: 1. Provide all of the territorial units of ATS surveillance systems with the ability to archive footage during deadlines, including during interrogations of persons invited to the rajvìdìliv staff body of inquiry or investigation and questioning of suspects in committing a crime. 2. Accelerate the creation of the State Bureau of Investigation (the position of the new palmtops) and to its functions as an independent body to investigate crimes committed by law enforcement officers. 3. Introduce the procedure of compulsory inspection of persons detained or delivered to police medical professional (a doctor). The regulations fix the duty of medical institutions to transmit information about bodily injury and damage to health caused by a detainee as a result of staying in the organ of Internal Affairs, not the police, and the Prosecutor's Office, and later in the newly created special unit – the State Bureau of Investigation.

*4. To prevent the evasion of responsibility for which police conducted pre-trial investigation in connection with taking them acts under art. 127 of the Criminal Code of Ukraine (torture), ensure their suspension from duties at the time of the investigation with the subsequent release of the bodies of internal affairs after sentencing by the Court. 5. Enter the practice of compulsory entry in the unified register of pre-trial investigations relevant information in case of detection of the fact of death of the person previously detained and taken to the Police Department, with the subsequent comprehensive, thorough and impartial conduct of pre-trial investigation. With the aim of improving the forms and methods of preventing cruel or otherwise inhuman treatment of people in police activities should:*

1. 1. Improve the statistics of ministry on account of unlawful violence and maltreatment in the police by introducing a statistical accounting of cases of torture and the persons against whom indicted of involvement in violence, with the subsequent

disclosure of such facts in the media, which is a pretext for establishing further control the behavior of a particular person and the sources of its profits. 2. Orient units inspection on your personal structure and internal security of the Ministry during inspections by district police station on the implementation of targeted and regular work on defining facts of torture, cruel, inhuman or degrading treatment or punishment, the dignity of workers, the police and take measures to prevent them. 3. To continue the joint work of the Verkhovna Rada of Ukraine with the Commissioner for human rights and non-governmental human rights organizations regarding the establishment of a preventive mechanism for preventing torture by model "Ombudsman"; 4. Create the Institute Board from the apparatus of Parliament Commissioner for human rights and empower their internal controls compliance functions and ensuring the rights of persons detained and delivered to the organs of internal affairs. 5. To strengthen the professional selection of candidates to serve in the bodies of Internal Affairs, through the introduction of a test aimed at detecting in them a propensity for aggressive behavior. 6. View terms and conditions of the service member and the načal'nic'kim composition of the internal affairs bodies and introduce practical work experience as one of the conditions of the promotion. 7. To introduce the practice of regular training of employees in the service of Internal Affairs classes for international mechanisms to prevent torture and other ill-treatment, to effectively investigate complaints and reports of torture, taking into account the practice of the European Court of human rights. 8. Enter the programs of training of future specialists for bodies of Internal Affairs specialized courses that would expose the essence and features of the constitutional rights and freedoms while making employees of internal affairs bodies activity in the fight against crime and the protection of public order. 9. In order to prevent commit violence against juvenile offenders to develop in accordance with international standards and introduce special regulations, which predict the investigation of complaints of children to torture and ill-treatment by the staff of internal affairs bodies; rules for the application of physical force, special means and firearms against minors in all law enforcement agencies; the rules of medical support; bringing them to labour in prisons.

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