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UKRAINE: TWO YEARS AFTER EUROMAYDAN: THE PROSPECT FOR JUSTICE IS THREATENED

Two years after the EuroMaydan protests, the Ukrainian authorities have failed to deliver justice and adequate reparations to the victims of abuses committed during the protests, or to restore confidence in the justice system and the rule of law in Ukraine. Promises to bring to justice the perpetrators of human rights violations committed during EuroMaydan, remain largely unfulfilled.

The past year has seen some progress and the recent adoption of the law on the State Investigation Bureau (SIB) is a positive step. However, to date, the process has been slow and inconclusive. Furthermore, significant challenges lie ahead which threaten to undermine any prospect of delivering real justice to the victims of excessive use of force by law enforcement officers during EuroMaydan.

Human rights violations committed during EuroMaydan

Between 21 November 2013 and 22 February 2014, hundreds of thousands of people took part in protests in Kyiv's *Maydan Nezalezhnosti* (Independence Square), and other Ukrainian cities. What started as a peaceful protest against the government's refusal to sign an association agreement with the EU evolved into a mass protest movement against the government itself. After the authorities attempted to forcefully disperse around 200 peaceful protesters, many more took to the streets. In the standoff with police that followed, amongst the predominantly peaceful gathering of protesters there was a minority who became violent. Law enforcement officers responded with indiscriminate and excessive use of force against the violent and non-violent protesters alike, resulting in hundreds, and possibly thousands, being injured and provoking new rounds of violence. Security forces also used firearms against the protesters, and dozens were shot and killed. According to the Ministry of Health, 106 people died as a result of the protests, including at least 13 police officers.

Systemic flaws in the criminal justice system exposed

Amnesty International has documented numerous cases of the unlawful use of force by law enforcement officers during the demonstrations, including killings and torture and other ill-treatment. The organization has repeatedly highlighted the shortcomings of the post-EuroMaydan investigations¹ which, in turn, expose the long-standing structural problems that persist in the Ukrainian criminal justice system. The authorities have consistently failed to carry out prompt, effective and impartial investigations into abuses committed by law enforcement officers during the EuroMaydan protests, or for ordinary crimes, or for abuses committed by government forces in the context of the conflict in eastern Ukraine.

The entrenched structural problems have not been addressed and are now compounded by further challenges that have arisen in the wake of the adoption of the new law creating the State Investigation Bureau, as explained below.

¹ Amnesty International, "*Ukraine: A Year After EuroMaydan: Justice Delayed, Justice Denied*", 18 February 2015, AI Index: EUR 50/1683/2015, available at <https://www.amnesty.org/fr/documents/eur50/0001/2015/en/>.

EuroMaydan investigations: progress at last but no justice in sight

A year ago, of the hundreds of victims of human rights abuses during EuroMaydan, few, if any, had information as to whether their cases were being investigated. Only a minority of those contacted by Amnesty International had been interviewed as victims of crimes, and none had been informed about the progress of their case.

A year on, and two years after the EuroMaydan protests, there is an indication that progress has been made with regard to at least some of the better-documented episodes of police violence. These include the clashes on Bankova Street on 1 December 2013, the ill-treatment and beatings of protesters on and surrounding Hrushevskogo Street between 21 and 23 January 2014, and the deaths of over 70 people on Instytuska Street between 18 and 22 February 2014. According to information collected by Amnesty International, following the creation in December 2014 of the Special Investigations Directorate of the Prosecutor General's Office, there was finally some tangible progress in the course of 2015, including forensic examinations, witness identifications and victim and witness interviews.

In its publication marking the first anniversary of the EuroMaydan protests, in February 2015, Amnesty International documented the cases of 11 individual victims of excessive use of force by police during the protests.² These cases represented only a tiny sample of the numerous incidents of excessive or arbitrary use of force by law enforcement officers during EuroMaydan. A year ago, not a single one of them had any information on their cases, and most of them had not even been interviewed as victims in the first instance. By contrast, almost all of them had been detained and questioned as criminal suspects although proceedings against them were subsequently dropped as a result of a string of so-called amnesty laws adopted by the Verkhovna Rada.

Since last year, at least four of these 11 victims have been contacted by investigation officials in order to secure key evidence regarding the abuses they were subjected to. Serhiy Nuzhenko, Yury Bolotov and Gennadiy Cherevko, who were severely beaten on 1 December 2013 on Bankova Street by Berkut riot police, have been interviewed by investigators several times. Additionally, Iryna Rabchenyuk, who was also hit in the face with a baton by a Berkut officer on 1 December 2013 and sustained a skull fracture and lost vision in one eye, has been questioned at least once and participated in a number of forensic examinations.

However, there has been no progress in at least one of the cases Amnesty International has documented, that of Vladyslav Zagorovko, who was beaten on Bankova Street and suffered broken ribs and a detached retina. Amnesty International is not in a position to assess the progress of EuroMaydan investigations in cases which it has not previously documented.

Prosecuting the perpetrators

Following the downfall of President Viktor Yanukovich in February 2014, the new government promised to effectively investigate all human rights violations and abuses committed during the EuroMaydan protests and bring to justice those responsible. At the same time, it was quick to name President Yanukovich and his closest associates, all of whom had fled the country, as the principal culprits of those violations. Since then, various senior government officials from the Ministry of the Interior (MVD), Security Service of Ukraine (SBU) and the Prosecutor General's Office, reported successes in identifying and charging perpetrators of abuses in EuroMaydan, including former police and security service officials. In many cases, the number of identified perpetrators and individuals charged with related crimes were inconsistent, and often appeared premature, which added to the general confusion surrounding the investigations, exposed a lack of coordination between the different agencies involved, and further undermined public trust in the justice system.

² Amnesty International, *"Ukraine: A Year After EuroMaydan: Justice Delayed, Justice Denied"*, 18 February 2015, AI Index: EUR 50/1683/2015, available at <https://www.amnesty.org/fr/documents/eur50/0001/2015/en/>.

The coordination of various elements of the investigations appears to have improved noticeably with the creation, in December 2014, of the Special Investigations Directorate of the Prosecutor General's Office. The Head of the Directorate, Serhiy Horbatiuk, has regularly spoken to the media and civil society organizations to provide updates on the investigations. In one of his most recent media appearances, on 17 November 2015, he told journalists that over 1,000 law enforcement officers had been under investigation in connection with the EuroMaydan events, of whom more than 200 had been officially identified as criminal suspects. In a further update, on 20 November 2015, the website of the Prosecutor General's Office announced that the total number of criminal suspects in EuroMaydan-related cases, was 281 although not all of them related to police violence as they include instances of arbitrary detention, prosecution of peaceful protesters and other cases. The 281 cases concern 43 high-ranking officials, 133 police officers, 14 judges, 9 members of the Prosecutor's Office, 6 local officials, and 76 "civilians, including so-called *titushki*" (a colloquial term used to refer to men who are believed to have been widely deployed by the authorities during the protests to intimidate protesters). According to that same update, 123 cases against 55 persons had been submitted by the Prosecutor General's Office to courts, and 28 court decisions had been taken.³ However, no further details were provided and it is not possible to establish from this information, how many of those court decisions concerned convictions as opposed to, for instance, judicial approval for certain investigative activities, nor how many concerned individuals who have left Ukraine or are now in Crimea and had their cases heard in absentia.

At the time of writing, only two law enforcement officers are known to have been convicted in connection with the EuroMaydan protests, in May 2014. They received suspended sentences of three and two years for "exceeding authority or official powers" in connection with the ill-treatment of Mykhaylo Havryliuk, a protest leader who had been detained and was subsequently filmed standing naked in sub-zero temperatures in front of dozens of police officers, on 22 January 2014.

Beyond this, just two low-ranking members of the disbanded Berkut riot police force, both under arrest since spring 2014, are reported to be on trial currently. A further four ex-Berkut commanding officers were arrested between August and October 2015 and charged for EuroMaydan-related crimes, and are awaiting trial at present.

Creation of the State Investigation Bureau: long-overdue and perilously rushed

On 12 November 2015, the Verkhovna Rada passed legislation regarding the creation of the State Investigation Bureau (SIB). This was preceded by lengthy delays and deliberation on the first and second drafts of the bill. It was signed into law by President Petro Poroshenko on 14 January 2016.

The creation of the SIB had been proposed long before the events of EuroMaydan. However, its exact purpose was envisaged differently by its various proponents and ranged from an anti-corruption agency to an independent police complaints mechanism. According to the recently adopted law, the SIB is a stand-alone investigative agency with jurisdiction over crimes committed by members of law enforcement agencies and by the military, as well as by senior state officials, members of parliament and judges, and members of the National Anti-Corruption Bureau (NACB). Most of the SIB's investigative authority comes directly from the Prosecutor's Office which will now be stripped of all its investigative functions in favour of the SIB as well as the newly created NACB.

The creation of the SIB is a long-overdue step in the right direction. The current system, in which the investigative powers are distributed among the Prosecutor's Office, police and the SBU, has proved grossly ineffective for the investigation of abuses committed by members of

³ "Zlochyny proty Maydanu: rezultaty rozsliduvannya", Prosecutor's General Office, 20 November 2015, available at www.gp.gov.ua/ua/news.html?m=publications&t=rec&id=165726 (accessed on 9 February 2016)

these agencies.⁴ There are multiple reasons for this, including a culture of corporate solidarity grounded in an inherent conflict of interest and lack of impartiality in investigating allegations against associates as well as an institutional pressure to solve and reduce crime above all else. As a stand-alone investigative body which does not need to involve members of other law enforcement agencies for such functions as intelligence-gathering or arrest (these are within the powers given to the SIB by the new law), the SIB has the potential to fulfil the requirements of impartiality and become an effective investigative mechanism.

However, this prospect is by no means a given. Much will depend on how exactly the SIB is set up, and whether it will be able to fully uphold the key criteria of independence and impartiality, thoroughness, promptness, competence, and victim involvement and public scrutiny⁵ in its day to day operations.

Amnesty International is also concerned about the rushed fashion in which the SIB is being set up. The law on the SIB mandates that its provisions come into force “no later than 1 March 2016”. However, at the time of writing, its leadership has not yet been appointed, least any of its staff, and even the commission that will be responsible for the selection of candidates for the leadership role has not yet been established.

Moreover, it is unclear how the disputes and controversies over jurisdictions and competencies that may arise between different agencies will be solved. While Article 5 of the law “On State Investigation Bureau”, entrusts the SIB with an exclusive jurisdiction over crimes committed by a range of actors (see above), it also adds “unless these crimes fall under the jurisdiction of the detectives of the National Anti-Corruption Bureau of Ukraine”, suggesting these two agencies may come to claim competing jurisdiction over some cases.

However, a more immediate challenge arises from the legal clause by which the Special Investigations Directorate at the Prosecutor General’s Office is expected to hand over its EuroMaydan investigations to the SIB. No transition period or mechanism is envisaged in the law, which puts in peril the future of these investigations, and the prospect of justice and reparations for victims of abuses committed during EuroMaydan.

Recommendations

To redress the continuous failure to deliver justice and reparations to the victims of abuses committed by law enforcement officers during EuroMaydan, and to restore public trust in the criminal justice system, the Ukrainian authorities should take swift and decisive action, and in particular:

- Fulfil Ukraine’s international obligations and promptly bring to an effective conclusion the ongoing investigations into all instances of unlawful use of force by law enforcement officers during the EuroMaydan protests;
- Ensure that the outcome of any investigation is open to public scrutiny in order to restore public confidence in the rule of law and in those agencies responsible for upholding it;
- Without delay, take all the necessary legislative, policy and practical steps to ensure that the State Investigation Bureau is set up as an effective mechanism for the investigation of abuses committed by members of police and other law enforcement agencies;

⁴ Amnesty International has previously reported on how successive governments in Ukraine failed to address the problem of police impunity which has resulted in widespread human rights violations. For details, see for instance “Ukraine: Blunt Force: Torture and Police Impunity in Ukraine”, 12 October 2011, Index: EUR 50/010/2011, available at <https://www.amnesty.org/en/documents/EUR50/010/2011/en/>.

⁵ Criteria for an effective investigation as set out by the Council of Europe guidelines. For more information, see Eric Svanidze, *Effective Investigation of Ill-Treatment. Guidelines on European Standards*, Directorate General of Human Rights and Legal Affairs, Council of Europe, 2009, available at <http://www.coe.int/t/dgi/hr-natimplement/publi/materials/1121.pdf>

- Urgently ensure that the creation of the State Investigation Bureau does not impede progress in the investigations of EuroMaydan abuses, including by setting out a clear plan of transition and a mechanism for resolving the concurrent problems;
- Provide regular, timely and substantive updates on the progress of the ongoing investigations to all victims;
- Provide the victims of unlawful use of force by law enforcement officers during EuroMaydan with a clear timeline for the conclusion of the investigations and with firm and effective assurances that they will be provided with effective reparation, including compensation, rehabilitation, satisfaction and other guarantees of non-repetition.

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