INTERNATIONAL ADVISORY PANEL
МІЖНАРОДНА ДОРАДЧА ГРУПА

REPORT

of the International Advisory Panel

on its review of

the Maidan Investigations

31 March 2015

CONTENTS

List of abbreviations and acronyms 3

Introduction 5

THE FACTS 9

I. BACKGROUND FACTS 9

II. RELEVANT DOMESTIC LAW ON PRE-TRIAL INVESTIGATIONS 26

III. STRUCTURE AND STAFFING OF THE MAIN INVESTIGATING ORGANS 28
A. Structure of the PGO 28
B. Structure of the MoI 31
C. Structure of the SSU 33

IV. STRUCTURE AND CURRENT STATUS OF THE INVESTIGATIONS 34
A. Preliminary remarks 34
B. Investigations conducted by the public prosecution service 35
1. The PGO Casefile 228 35
(a) Dispersal of the demonstrations in the early morning of 30 November 2013 36
(b) Resolutions of 22 January 2014 on the use of special means against protesters 38
(c) Deaths and injuries of protesters by gunfire 38
(d) Abuse of power by officials, leading to non-firearms injuries, on 18-20 February 2014 48
2. The PGO investigation into the involvement of titushky 48
3. The PGO investigation into the ill-treatment of Mykhailo Havryliuk 49
4. The PGO investigation concerning the abusive prosecution of protesters 51
5. Investigations by the Kyiv City Prosecutors Office (EuroMaidan investigations) 52
C. Investigations conducted by the MoI 53
1. Deaths and injuries of law enforcement officers (18-20 February 2014) 53
2. Investigation concerning Dmytro Bulatov 54
3. Investigations concerning Ihor Lutsenko and Yurii Verbytskyi 54
4. Investigation concerning Tetiana Chornovol 55
5. Investigations conducted by the territorial offices of the MoI in Kyiv 55
D. Investigations conducted by the SSU 56

V. SUMMARY OF THE CURRENT STATUS OF THE INVESTIGATIONS 57

THE PANEL'S ASSESSMENT 60

I. GENERAL 60
A. The procedural requirements of Articles 2 and 3 of the Convention 60
B. The impunity of law enforcement officers 61
C. The investigations prior to 22 February 2014 64
D. The investigations after 22 February 2014: challenges 66

II. THE INVESTIGATIONS AFTER 22 FEBRUARY 2014: COMPLIANCE WITH ARTICLES 2 AND 3 OF THE CONVENTION 68
A. Independence 68
B. Effectiveness of the investigations 71
1. Staffing and resources in the PGO 71
2. Allocation of the investigative work 73
3. MoI and SSU co-operation with the PGO 74
4. The role of the courts 78
5. The investigation of Berkut officers – an illustrative example 81
6. Amnesty 83
C. Promptness, reasonable expedition 84
D. Public scrutiny of the investigations 85
E. Involvement of victims and next-of-kin 88

III. THE PANEL'S EVALUATION OF THE CURRENT STATUS OF THE INVESTIGATIONS 90

THE PANEL'S CONCLUSIONS **92**
I. SUMMARY OF THE PANEL'S CONCLUSIONS 92
A. Conclusions concerning the investigations prior to 22 February 2014 92
B. Conclusions concerning the investigations after 22 February 2014 92
II. THE PANEL'S CONCLUDING REMARKS 94
ANNEXES I - XI **97**

(This Report may be subject to editorial revision)

LIST OF ABBREVIATIONS AND ACRONYMS

AKS	A kalashnikov assault rifle
AP	Administration of the President
ARC	Autonomous Republic of Crimea
CC	Criminal Code
CoE	Council of Europe
Convention	European Convention on Human Rights
CPC	Criminal Procedure Code
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EAEC	Eurasian Economic Community
ECHR or European Court	European Court of Human Rights
EU	European Union
FSB	Security Service of the Russian Federation
GC	Grand Chamber of the European Court of Human Rights
Heaven's Hundred NGO	NGO called the Families of the Heroes of Heaven's Hundred
HRW	Human Rights Watch
IAP	International Advisory Panel
MID	Main Investigation Department
MoH	Ministry of Health
MoI	Ministry of the Interior
MP	Member of Parliament
OHCHR	Office of the United Nations High Commissioner for Human Rights
Ombudsperson	Commissioner for Human Rights of the Verkhovna Rada
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PGO	Prosecutor General's Office
SID	Special Investigations Division
SSU	Security Service of Ukraine
UAH	Ukrainian hryvnia, the national currency of Ukraine
Unified Register	Unified Register of Pre-Trial Investigations

INTRODUCTION

The International Advisory Panel

The International Advisory Panel ("the IAP" or "the Panel") was established by the Secretary General of the Council of Europe in April 2014, with the role of overseeing that the investigations of the violent incidents which had taken place in Ukraine from 30 November 2013 onwards met all the requirements of the European Convention on Human Rights ("the Convention") and the caselaw of the European Court of Human Rights ("the European Court").

The members of the Panel are Sir Nicolas Bratza (Chair), a former President of the European Court, Mr Volodymyr Butkevych, a former Judge of the European Court and Mr Oleg Anpilogov, a former prosecutor of Ukraine.

The Mandate of the Panel, the full terms of which are set out in Annex I to the Report, provided that the investigations into the violent incidents in question would be conducted by the relevant Ukrainian authorities in accordance with Ukrainian law; that the Panel should receive regular reports from the Prosecutor General's Office ("the PGO") on the progress of the investigations and should have full access to all relevant information and the right to request and receive any additional information as it deemed necessary; and that civil society should have the right to contact and communicate freely with the Panel. The Mandate further provided that at the end of the Panel's mission, a final report should be prepared by the Chair of the Panel and presented to the Secretary General of the Council of Europe and the Ukrainian authorities.

The scope of the Panel's review

The Mandate of the Panel explained that the Secretary General had first proposed to create an International Advisory Panel in the light of the then existing political crisis in Ukraine, as well as the need to create public confidence in the investigation into the violent incidents. The proposal was first made in December 2013, immediately following the violent events during the protest demonstrations in the Maidan area of Kyiv in the early morning of 30 November and on 1 December and prior to the violent events in the city in January and February 2014, which resulted in tragic loss of life and serious injuries of numerous protesters and law enforcement officers. It was not until April 2014 that the final member of the Panel was appointed and the Panel was thereby constituted. In the same month, the Panel's Mandate was sent by the Secretary General to the Prime Minister of Ukraine and, pending a response, the Panel held its first working meeting in Strasbourg on 5-7 April. The response of the Minister of Foreign Affairs of Ukraine was received in a letter dated 1 May 2014 in which the Minister reiterated that the Ukraine Government welcomed the constitution of the Panel and undertook to facilitate its work. This undertaking was subsequently repeated by President Poroshenko during his visit to Strasbourg in June 2014. On the initiative of the Panel, the President appointed a Focal Point within his Administration.

On 2 May 2014 the tragic events in Odesa occurred, which similarly resulted in a considerable loss of life. Soon after those events, numerous calls were made, notably by the Council of the European Union and by President Poroshenko, for the Panel to review the investigation to be conducted into those events. In a letter of 12 September 2014, the Permanent Representative of Ukraine to the Council of Europe reiterated the full support of the Government of Ukraine to the review of the Maidan-related investigations. While underlining that the main focus of the Panel's work should continue to be the Maidan investigations, the letter went on to confirm the Ukrainian Government's acceptance that the

investigation into the events in Odesa on 2 May should also be regarded as covered by the Panel's Mandate. The letter concluded by stating that the Mandate of the Panel would be fulfilled on completion of the review of the Maidan and Odesa investigations.

The Panel announced its readiness to undertake a review of the investigation of the Odesa events but indicated that it would begin work on those events only after its review of the Maidan-related investigations had reached an advanced stage. In February 2015, the Panel began its review of those investigations.

The present review of the Panel has accordingly been confined to the violent incidents surrounding the Maidan demonstrations between 30 November 2013 and 21 February 2014. The Panel has interpreted its role under the Mandate as relating to the compliance with Articles 2 and 3 of the Convention, and the relevant European Court's caselaw, of the investigations into the incidents of ill-treatment, deaths and serious injuries within that period, to the exclusion of incidents which might have given rise to violations of other Convention rights of those participating in the demonstrations. In particular, the Panel did not see it as its role to examine whether the arrest, detention, treatment and trial of numerous protesters, or the investigation into those events, were in compliance with the requirements of Articles 5 or 6 of the Convention. Moreover, in its review, the Panel has focused on the investigations of the particularly violent incidents during that period, notably those taking place in the early morning of 30 November and on 1 December 2013, from 19 to 22 January 2014 and from 18 to 21 February 2014.

The Panel has further interpreted its Mandate as extending not only to the investigations of the deaths and serious injuries of protesters and other civilians but as including deaths and injuries of those responsible for law enforcement during the Maidan demonstrations.

As is clear from the terms of the Mandate, it was never the role of the Panel to conduct or assist the investigation into, or to establish the facts concerning, the violent incidents in question. This was and is exclusively the responsibility of the Ukrainian investigatory authorities, namely the PGO, the Ministry of the Interior ("the MoI") and the State Security Service ("the SSU"), all of which were charged with responsibility for various casefiles in the Maidan-related investigations. Nor did the Panel have the role of determining whether the investigation of an individual case satisfied the requirements of the Convention. Indeed, it notes that certain Maidan-related applications are pending before the European Court. Its role was essentially a supervisory one, the Panel reviewing in broad terms whether the investigations carried out at national level into the deaths, serious injuries and acts of ill-treatment complied with international standards. In making this assessment, the Panel has on various occasions scrutinised the adequacy of the investigation of individual incidents that had attracted particular notoriety. This was done not for the purpose of arriving at a conclusion on the quality of the specific investigation but rather as providing useful indications of the adequacy of the investigations seen as a whole.

The Panel's working methods

The procedural steps taken by the Panel in carrying out its review are fully set out in Annex II to the Report. In summary, the Panel made a series of detailed requests for information in writing from the various Ukrainian authorities and, through its Internet page, invited NGOs to submit written material. The Panel held a series of meetings in Kyiv with representatives of the relevant authorities and of the NGOs in August, September, November and December 2014 to follow up on the information provided in writing.

The Panel requested final written submissions from the investigating authorities on the status of their investigations as at 30 November 2014. Nevertheless, the Panel has taken

account, in its analysis, of developments until 23 February 2015, in so far as these could be gleaned from information in the public domain[1].

In carrying out its review, the Panel was confronted with a task of some difficulty. The violent events in Kyiv, especially those from 18-20 February 2014, were of the utmost gravity and the investigations which followed were and are of considerable complexity. As an international body, the Panel was, throughout its review, required to follow the investigations by working through interpretation and translation. Its task was not assisted by the fact that, at least in the early stages of its review, there was a lack of effective co-operation with the Panel on the part of certain of the authorities, which necessitated the setting up of a Focal Point for the Panel to improve co-operation. Nor was the Panel assisted by fact that it was refused access to certain classified documents which were of direct relevance to its work or by the frequent changes in the representation of the authorities appearing before it, which resulted in a lack both of continuity and of consistency in the information given to the Panel. The Panel would nevertheless wish to acknowledge the assistance it received during the course of its review both from the authorities, especially the Prosecutor General's Office, and from the NGOs.

The Panel would wish to record its appreciation of the invaluable assistance given to it by staff members of the Council of Europe and by its two interpreters, Vadym Kastelli and Larysa Sych.

The Panel's Report

The functions of the persons referred to in the Report may be found at Annex III. In order to provide the fullest information, the Panel has included on its webpage[2] a series of Information Notes related to the subject of this Report, as well as an outline of the main public statements made by the investigating authorities from March 2014 to February 2015. All references in the Report are to the bodies and laws of Ukraine unless otherwise indicated. Although the Report makes reference to Berkut officers, it should be understood that these are reference to *former* Berkut officers since this special force was disbanded by decree in 2014. The Panel would underline that its descriptions of the facts emerging from the pre-trial investigations should not be interpreted as prejudging any facts that may be found at trial or the liability of any suspect to whom reference is made.

[1] On 20 March 2015 the Panel received a letter from the PGO recording minor progress in the investigations. The letter also informed the Panel about the recently instituted proceedings concerning the adoption of the "Draconian laws". The Panel has not taken account of this information in its Report.

[2] IAP Information Notes

THE FACTS

I. BACKGROUND FACTS

A. The events preceding the Maidan demonstrations

1. In November 2013, after a long period of negotiations, Ukraine was on the point of signing the EU-Ukraine Association Agreement[3]. However, in the second half of that month information circulated to the effect that the Agreement would not be signed for various reasons including a failure by Ukraine to satisfy the requirements of the European Union and tensions between Ukraine and the Russian Federation which had resulted in a trade war. Calls began to be made for a public show of support in Ukraine for closer links with Europe[4]. These calls amplified the mood of public protest, which had existed in Ukraine since the summer of 2013 and which had been caused by poor living standards, elevated prices and high levels of unemployment.

2. In the second half of November 2013, law enforcement bodies began to reinforce the police presence in Kyiv. In particular, according to the MoI submissions to the Panel, by 25 November 2013, 1,369 additional Berkut officers and Internal Troops[5] had arrived in Kyiv, following the requests of the Main Department of the MoI in Kyiv. There were also allegations that the SSU had instructed its relevant departments to increase the level of operational readiness in view of the "threat of a terrorist act in Kyiv on 24 November and on 25-30 November 2013"[6].

3. On 20 November 2013 the Cabinet of Ministers of Ukraine issued a press release, reporting on the statement of Prime Minister Mykola Azarov at a press conference in Saint-Petersburg to the effect that Ukraine was continuing preparations for the signing of the Association Agreement. However, on the following day, the Cabinet of Ministers, suspended[7] preparations for the signature of the Agreement which had been foreseen for the Eastern Partnership Summit in Vilnius at the end of November 2013. It was also noted that Ukraine should reconsider its trade relations with the Russian Federation and with other members of the Commonwealth of Independent States.

4. Following this decision, calls appeared on social networks for the public to gather on Independence Square in Kyiv (Maidan) in favour of a pro-European choice by Ukraine. The first protesters gathered there in the evening of 21 November 2013, the day after Kyiv City

[3] The EU had been negotiating with Ukraine since March 2007 for an Association Agreement including a comprehensive free trade area. These talks were concluded in 2012. On 24 June 2013 the EU-Ukraine Cooperation Council endorsed in Luxembourg the updated EU-Ukraine Association Agenda to prepare and facilitate the implementation of the EU-Ukraine Association Agreement.

[4] For example, on 17 November 2013 the leader of a civic initiative entitled "Third Ukrainian Republic", Yurii Lutsenko, made a call on the project's web-page to come to a meeting on European Square in Kyiv to support the European choice of Ukraine in view of an alleged decision of the Ukrainian Government to suspend the EU-Ukraine Association negotiations.

[5] See Annex VII for a description of relevant law enforcement formations.

[6] In December 2013 an MP, Viktor Baloha, published letters in this respect allegedly issued by the SSU.

[7] Decree no. 905-p "Issues on signature of the Association Agreement between the EU/EAEC/their member States and Ukraine".

Circuit Administrative Court had, on the application of the Kyiv City State Administration, banned various demonstrations in the city centre[8].

5. On 24 November 2013 the first major pro-European and anti-government demonstration took place. The number of participants was estimated by various sources to be between 50,000 and 100,000 persons. The participants demanded the resignation of Government and the dissolution of Parliament should the Association Agreement not be signed. The protesters gathered at the Cabinet of Ministers' building, near which certain anti-EuroMaidan groups, including the so-called titushky,[9] had already gathered. It was alleged that Berkut officers used tear gas in response to what were claimed to be violent actions on the part of the anti-government protesters, although some sources claimed that smoke grenades, and not tear gas, had been used[10]. The first tents, erected by the representatives of the opposition political parties, appeared on European Square and, it seems, also on Maidan.

6. On 25-26 November 2013 the MoI issued several press releases. The press releases contained photos of protesters spraying a substance in the faces of police officers. It was stated that this amounted to an act of provocation and that certain politicians had used the situation for their own political advantage. The Minister of the Interior, Vitalii Zakharchenko, announced that force would not be used against peaceful protesters. Force would, however, be used in the event of the blocking of streets, the destruction of property or a refusal to obey a court order. The Minister said that criminal proceedings had been instituted against hooligans and against those who had resisted the police.

7. On 28/29 November 2013 the EU summit took place in Vilnius. Ukraine did not sign the EU-Ukraine Association Agreement.

8. On 29 November 2013 the Prosecutor General (PG), Viktor Pshonka said during a press briefing in Kharkiv that there would be no forcible dispersal of demonstrations unless the protesters were in breach of the law.

B. The events of the early morning of 30 November 2013

9. In the early morning of 30 November 2013, between 200 and 1,000 protesters remained on Maidan, maintaining the round-the-clock vigil which had been in place since 21 November 2013. Public video footage indicated that the protesters were mostly young people and the mass media later reported that those present on Maidan during that night were mostly students. Some representatives of the *Pravyy Sector* movement and a small group of journalists were also present[11].

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[8] A number of political parties and civic movements, such as the "Coalition of Participants of the Orange Revolution", the "Ukrainian Patriotic Alternative" and others, intended to commemorate on 22 November 2013 the 9th anniversary of the Orange Revolution and the 3rd anniversary of the Tax Maidan (mass protests of entrepreneurs in Kyiv between 16 November and 2 December 2010 against the new Tax Code). At the same time, members of the Orthodox Church planned a march between the Kyivo-Pecherska Lavra Monastery and Sofiivska Square, including passing along Riznytska Street, where the PGO is situated. The demonstrators intended to request the law enforcement bodies "to release an orthodox politician". The court granted the authorities' applications, without giving any particular reasons. The court further banned demonstrations aimed at commemorating the anniversary of the Orange Revolution in Maidan, European Square and Khreshchatyk Street between 22 November 2013 and 7 January 2014.

[9] *Titushky* is a term for hooligans who were allegedly hired by the authorities to attack and intimidate the anti-government demonstrators.

[10] See, e.g., http://www.pravda.com.ua/articles/2013/11/24/6987513/ (in Ukrainian)

[11] Joint submissions by several NGOs to the Panel ("Joint NGO submissions"). For the names of those NGOs see Annex II.

10. According to the PGO[12], Andrii Kliuiev, the Secretary of the National Security and Defence Council, as well as Volodymyr Sivkovych, his deputy, Oleksandr Popov, the Head of the Kyiv City State Administration and Valerii Koriak, the Head of the Main Directorate of the MoI, decided to disperse by force the peaceful gathering of protesters on Maidan that night, on the pretext of the need to prepare for the New Year celebrations.

11. At around 3:00 a.m. Kyiv City State Administration employees brought in equipment and materials to install a New Year tree on Maidan. Some of the protesters blocked the vehicles carrying the equipment.

12. At around 4:00 a.m. the Deputy Head of the Public Security Department of the Main Department of the MoI in Kyiv told the protesters to leave, since the New Year tree was to be erected on the site where the protesters were camping. It is alleged that Mr Koriak, through Mr Fedchuk, the Head of Kyiv Public Safety Police, and Mr Marynenko, the Head of the Kyiv Police Public Safety Department, thereafter issued an order to the Berkut officers "to remove the protesters".

13. HRW reported the events in the following way:

> "Human Rights Watch interviewed 12 people who witnessed what happened there on November 30. They consistently said that at around 4 a.m., a man who appeared to be a municipal official in civilian clothing came to the square and asked the protesters to leave so that workers could put up the city's Christmas tree. The protesters then formed a human chain around the monument at the centre of the square.
> In response, riot police moved in suddenly without warning and started hitting protesters with batons, pushing them off the monument and dragging them away. The entire operation lasted about 20 minutes. A footage of the incident recorded by a witness and examined by Human Rights Watch shows riot police moving in on the protesters, striking them with batons, and kicking and hitting people who fell. Another footage shows riot police chasing and grabbing people on adjacent streets and hitting those who had already fallen to the ground."[13]

14. The Head of the MoI press service described the events as follows:

> "The representatives of the communal services department requested the law-enforcement authorities to secure public order and to secure the passage of the machines to Maidan. Protesters were informed that their actions were unlawful. Certain protesters started to throw bottles with water, fire sticks and stones at the police officers. After that the police officers removed the protesters from the square. All complaints and information received from doctors about the infliction of injuries will be checked and decisions adopted in compliance with the law in force."[14]

15. The press release of the PGO of 20 December 2013 stated the following:

> "Regarding the events of 30 November 2013:
>
> - at 3:51 a.m. vehicles of the communal services arrived at Maidan where they were blocked by protesters;
>
> - around 4:00 a.m. a communal worker informed the police about it;
>
> - at 4:10 a.m. the Berkut officers started to act in order to push out the protesters.
>
> Since there was active resistance, individual Berkut officers used special means. […] At 4:20 a.m. the protesters were pushed out of Maidan".

16. The events were widely filmed by protesters and by journalists. It was reported that law enforcement officers also used gas and stun grenades[15]. Around 300 Berkut officers were

[12] See paragraphs 215-225 below.
[13] http://www.hrw.org/news/2013/12/03/ukraine-excessive-force-against-protesters.
[14] See video (in Ukrainian).
[15] See e.g. video and video.

deployed in the forcible dispersal of the protesters on Maidan[16]. As a result of the events, between 60 and 91[17] persons were injured and up to 10 persons were hospitalised. According to EuroMaidan SOS[18], 18 persons underwent forensic medical examinations and the following injuries were recorded: contused head wounds, closed craniocerebral injuries, concussions, broken arms and legs, contusions, haematomas, broken noses and knocked out teeth.

17. The Head of the Kyiv City Ambulance Station reported that 35 persons had requested medical assistance and 7 had been hospitalised. Nine ambulances had been called to the Shevchenkivskyi District Police Station and two persons were hospitalised. The reported injuries included scratches, bruises, one concussion and one suspected bone fracture[19].

18. The Deputy Prosecutor General, Anatolii Pryshko, stated at a briefing on 5 December 2013 that 79 persons had been injured including 6 students, 4 journalists, two foreigners and 7 police officers. Ten persons had been hospitalised[20].

19. According to a MoI statement, the police arrested 35 protesters. Those arrested had been brought to the Shevchenkivskyi and Pecherskyi District Police Departments. According to the statement, all had been charged with misdemeanours and subsequently released. In a separate statement, the Ministry stated that 12 law enforcement personnel had been injured during the protest and that two criminal cases had been opened[21].

20. According to the newspaper *Dzerkalo tyzhnia*[22], Mr Koriak acknowledged at a press conference on 30 November 2013 that he had ordered the forcible dispersal of the EuroMaidan protesters and requested people to submit all available footages in order to facilitate the investigation.

21. On 30 November 2013 the Minister of the Interior apologised for the excessive use of force by law enforcement officers and said that an investigation would be opened. On 3 December 2013 the Prime Minister also apologised in Parliament for police actions on Maidan[23].

22. On 30 November 2013 the Kyiv City State Administration initiated proceedings against the Batkivshchyna Party and UDAR Party, for an order banning demonstrations between 30 November 2013 and 7 January 2014 on Bankova, Hrushevskoho and Bohomoltsia Streets, and in European Square. The Kyiv City Circuit Court examined the case at around midnight on the same day. Taking into account the existence of calls to rally on the streets, to organise a revolution and to topple the current regime, the court granted the application to ban the demonstrations. The court also referred to the failure of the organisers to comply with the requirement, laid down by the decision of the Kyiv City Council, that ten days' notice should be given of any planned demonstration.[24]

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[16] See report "On human rights situation in Ukraine" of the OHCHR of 15 April 2014.
[17] PGO submissions to the Panel.
[18] Euromaidan SOS is a self-organised group of human rights and civil society activists, lawyers, journalists and other concerned citizens of different professions, which was created in response to the actions of the authorities to disperse the peaceful demonstrations on Maidan in the night of 29 to 30 of November 2013.
[19] See e.g. http://ua.korrespondent.net/ukraine/politics/3273128-pislia-rozghonu-yevromaidana-za-meddopomohoui-zvernulysia-35-osib-semero-z-yakykh-hospitalizovani-holovlikar-shvydkoi (in Ukrainian)
[20] See e.g. http://interfax.com.ua/news/general/179611.html (in Russian)
[21] See http://www.hrw.org/news/2013/12/03/ukraine-excessive-force-against-protesters.
[22] http://zn.ua/POLITICS/nachalnik-stolichnoy-milicii-vzyal-na-sebya-otvetstvennost-za-razgon-evromaydana-133994_.html.(in Russian)
[23] See http://www.hrw.org/news/2013/12/03/ukraine-excessive-force-against-protesters.
[24] Kyiv City State Administration submissions to the Panel. For further information as to the law concerning the right to peaceful assembly, see IAP Information Note No. 11.

23. During a meeting on 30 November 2013 between the Minister of the Interior and the Ambassadors of the United States and Poland, it was noted that around 580 demonstrations had recently taken place in various parts of Ukraine and that more than 360,000 persons had participated in those demonstrations.

C. The events of 1 December 2013

24. In reaction to the violent dispersal of protesters on Maidan early in the morning of 30 November 2013, several hundred thousand people participated in a march in the centre of Kyiv on 1 December 2013[25].

25. It was claimed by the PGO that, on 30 November 2013 and 1 December 2013, between 500,000 and 1,000,000 protested in Kyiv against the unlawful actions of the police officers.

26. At around 1:00 p.m. 50-60 persons wearing masks and helmets and armed with sticks broke into the Kyiv City State Administration. They were led by a journalist, Tetiana Chornovol, who called for the occupation of the building to prevent its being burned down. She also stated that the protesters needed the building as their headquarters[26]. On the same day the National Resistance Staff was created. It was situated in the Trade Union Building.

27. Protesters also gathered near the Presidential Administration on Bankova Street. At about 2:20 p.m. around 500 protesters were present. Some of them threw stones and burning sticks at the law enforcement officers who were blocking the passage to the Presidential Administration. There were numerous allegations that titushky were used to incite the protesters[27] and to provoke the use of force by the officers.

28. Certain of the protesters commandeered an open-pit loader and allegedly tried to break through the cordon of law enforcement officers. The authorities stated that there were members of right-wing nationalist organisations among the protesters.

29. At around 4:30 p.m. Berkut officers counter-attacked, inflicting numerous injuries on protesters and on journalists. Various sources reported that the use of force had not been proportionate and that persons not involved in the protests had been severely beaten; available video footage would seem to confirm this[28]. Law enforcement officers, both Internal Troops and Berkut officers, used tear gas, rubber sticks and stun grenades.

30. A report of the Office of the UN High Commissioner for Human Rights (OHCHR) of 15 April 2014[29] recorded that on 1 December 2013 at least 50 law enforcement officers and hundreds of protesters had been injured and that twelve persons had been detained on charges of organising mass disorder. The Health Protection Department of the Kyiv City State Administration announced that, on 1 December 2013, 165 persons had requested medical assistance and that 109 of them had been hospitalised[30]. In his press briefing of 5 December

[25] On 1 December 2013 the Kyiv Circuit Administrative Court, on the application of the Novi Petrivtsi Village Council, banned demonstrations near the residence of the President of Ukraine. The ban was imposed from 1 December 2013 to 7 January 2014 in respect of the Batkivshchyna Party, which had intended to rally in support of the EU Association Agreement and to demand the impeachment of the President. The court concluded that the demonstrations would interfere with the residents' right to recreation and, since the demonstration might be joined by opposing groups, it might lead to mass disturbances and prevent law enforcement officials from ensuring respect for public order.

[26] See e.g. http://fakty.ictv.ua/ua/index/read-news/id/1498757 (in Ukrainian).

[27] See e.g. video and video.

[28] See e.g. video and materials.

[29] See report "On human rights situation in Ukraine" of the OHCHR of 15 April 2014.

[30] http://kievcity.gov.ua/news/12047.html (in Ukrainian).

2013, the Minister of the Interior stated that 156 law enforcement officers had been injured, of whom 126 were hospitalised, four in a serious condition.

31. Nine persons were arrested in connection with these clashes. By a decision of the Shevchenkivskyi District Court of Kyiv of 3 December 2013, all were placed in pre-trial detention for two months. All had injuries of various degrees of severity. Amnesty International noted that, of the nine persons arrested, eight had been immediately hospitalised. Subsequently, two other persons were arrested and accused of taking the open-pit loader[31].

32. According to statistics published by the Ministry of Health ("MoH"), 248 people sought emergency medical assistance in Kyiv between 30 November and 2 December 2013, 190 of them between midday on 1 December and 6:00 a.m. on 2 December. The MoH stated that 139 people had to be hospitalised, including 76 law enforcement personnel and three journalists[32].

33. According to the MoI internal investigation report of 24 April 2014, 3,560 law enforcement officers had been deployed in the centre of Kyiv on 1 December 2013, including 850 Internal Troops.

D. The later events of December 2013

34. On 3 December 2013 the Verkhovna Rada rejected a vote of no confidence in the government.

35. On 5 December 2013 the Verkhovna Rada Committee on Human Rights, National Minorities and Interethnic Relations held a meeting concerning the events of 30 November – 1 December 2013. The Committee requested the PGO and the MoI to conduct an independent investigation into the above events.

36. On 5 and 6 December 2013 the Kyiv City Circuit Administrative Court granted the application of the Kyiv City State Administration to ban demonstrations by the Initiative Group "Kyiv Civic Active" and by the UDAR Party, aimed at manifesting support for the signature of the EU Association Agreement. Referring in general terms to the inconvenience that such demonstrations might cause for local residents and for the work of various communal services, the court banned the relevant demonstrations until 7 January 2014[33].

37. On 6 December 2013 protesters organised a "lying-in protest" in front of the PGO, demanding the release of those arrested on 1 December 2013.

38. On the same day an unscheduled meeting between President Yanukovych and President Putin took place in Sochi, the Russian Federation.

39. On 8 December 2013 another major demonstration took place on Maidan, in which several hundred thousand people took part and barricades were erected on Hrushevskoho, Liuteranska, Kruglouniversytetska and Bohomoltsia Streets. In the evening of that day the Lenin monument, in front of the Bessarabka market, was dismantled by protesters.

40. On the morning of 9 December 2013 the Tygr special police unit and other Internal Troop forces managed to break out of the military unit in Vasylkiv town which had been blockaded by protesters and reached Kyiv city centre. During the day certain metro stations in the centre of Kyiv[34] were closed, the reason given being that there had been information that those stations had been mined.

[31] Amnesty International submissions to the Panel.
[32] See http://www.hrw.org/news/2013/12/03/ukraine-excessive-force-against-protesters.
[33] Kyiv City State Administration submissions to the Panel.
[34] Namely, Teatralna, Khreshchatyk and Maidan Nezalezhnosti.

41. On the same day, the headquarters of the Batkivshchyna Party were searched by the police. In a press release issued in January 2014, the deputy head of the Main Investigation Department of the MoI stated that there was evidence in the computers seized from the headquarters that the protests had been planned in advance.

42. By 10 December 2013 the number of the law enforcement officers in Kyiv had been increased to 5,101, including 2,906 Internal Troops.

43. On the same day, the Pecherskyi District Court of Kyiv applied an interim measure in civil proceedings brought by Kyiv City Council against several private persons, the Batkivshchyna Party and Vitalii Klychko, ordering them not to obstruct the use of streets in Kyiv city centre.

44. During the night of 11 December 2013 there was attempt to remove the protesters from Maidan. At 1:00 a.m. the Berkut special forces tried to dismantle the barricades on Instytutska Street. Several Members of Parliament who were present among the protesters were beaten up. The stand-off between the protesters and the police lasted all night. The events were widely disseminated on the Internet and many more people arrived on Maidan during the night. In the morning the police attempted to raid Kyiv City Hall, by then occupied by the protesters, but the attempt failed. Various sources reported that up to 40 persons, including law enforcement officers, had been injured and up to 15 had been hospitalised. The events were reported by HRW as follows:

> "In the early hours of December 11, 2013, the police dismantled several barricades built by protesters that were blocking the streets leading to Independence Square and government buildings. The police also attempted to enter city hall, which opposition activists have occupied for over a week. Protesters tried to prevent the police from dismantling the barricades and entering city hall. Several people on both sides were reported injured in the ensuing clashes.
>
> Ten police officers were injured in the clashes, according to published Interior Ministry statements. Thirty protesters were injured, according to media reports. Eight activists were detained and charged with minor hooliganism, media reports said"[35].

45. On 17 December 2013 a meeting took place in Moscow between President Yanukovych and President Putin, at which a Ukrainian-Russian action plan was signed.

46. According to the joint NGO submissions to the Panel the first death during the public protests in Ukraine occurred on 22 December 2013. Pavlo Mazurenko died in the intensive care unit of Kyiv City Clinical Hospital No. 12 four days after he had been severely beaten by unknown individuals, who, according to him, were policemen.

47. According to the MoI, by 23 December 2013 there were 10,753 law enforcement officers in Kyiv, of whom 2,810 were Kyiv City police officers, 1,693 were Berkut officers, 1,150 were patrol police officers and 5,100 were Internal Troops.

48. In the early morning of 25 December 2013 Ms Chornovol, by then a EuroMaidan activist, was found severely beaten, on the ground near her car. She had allegedly gone that night to film the houses of the Minister of the Interior and of the Prosecutor General[36].

49. On 29 December 2013 an AutoMaidan protest took place at President Yanukovych's residence[37].

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[35] http://www.hrw.org/news/2013/12/12/ukraine-restraint-needed-both-sides.

[36] See paragraphs 341-344 below as regards the investigation into this incident.

[37] Since November 2013 the "AutoMaidan" movement was involved in the pro-EU protests. It organised car-rallies to support the protesters in various parts of Ukraine, to protest in front of the homes of high officials and to bring supplies to protesters. See paragraphs 321-324 below as regards the investigation concerning the prosecution of AutoMaidan members.

E. The events of January 2014

50. During the first two weeks of January 2014 the protests continued with certain isolated violent incidents.

51. On 16 January 2014 the Verkhovna Rada adopted several laws which became known as the "Draconian laws" and which restricted civil rights and liberties, and, in particular, freedom of assembly. Under these Laws, penalties for a number of offences were increased and criminal and administrative liability was introduced for a number of acts. Law No. 721-VII increased the fine for a breach of the procedures governing the organisation of demonstrations. It also introduced, among other things, fines for wearing masks or clothes similar to the uniform of police or military forces; a fine or administrative arrest for installing tents and constructions used during demonstrations without obtaining the consent of the authorities; and a fine for driving in a motorcade of more than five cars which resulted in the obstruction of traffic, without the prior agreement of the relevant department of the MoI. Penalties were increased for such crimes as the deliberate destruction of another's property, group violations of public order, incitement to acts threatening public order, hooliganism, occupying premises used by the state authorities, putting up resistance to state officials and threats of violence to law enforcement officials[38].

52. On the same day the Verkhovna Rada established a Temporary Investigation Commission, under the chairmanship of a Member of Parliament, Hennadii Moskal, to investigate the unlawful actions of the law enforcement authorities, including the dispersal of peaceful demonstrations, the ill-treatment of citizens and assaults on, and hindrance of, journalists in the performance of their professional activities[39]. The Commission, which was composed of ten MPs and was appointed for one year, was required to report to the Parliament within six months[40].

1. The events of 19-22 January 2014

53. On 19 January 2014 a mass protest meeting took place on Maidan against the new Draconian laws. The protesters intended to proceed to the Parliament building but found Hrushevskoho Street blocked, primarily by Internal Troops. According to the MoI internal investigation report of 24 April 2014, 6,710 law enforcement officers were deployed in the centre of Kyiv on 19 January 2014, including 3,707 Internal Troops.

54. At around 3:00 p.m. members of the *Pravyy Sector* tried to storm the security cordon placed on Hrushevskoho Street. The protesters burned down the Berkut bus and threw stones and flares at the law enforcement officers. The police used tear gas, stun grenades and water cannons, even though the air temperature was around -10C. The protesters alleged that the police were shooting at them with rubber bullets and grape-shots. According to the MoI, around 30 police officers were injured.

55. Following the Ombudsperson's request, the MoI informed her that 22 persons had been arrested by 6:00 p.m. on 20 January 2014.

56. On 21 January 2014 Serhii Lekar, the Deputy Minister of the Interior, allegedly acting on the instructions of the Minister and in the absence of a statutory report of the health authorities on the safety of the devices in question, submitted to the Cabinet of Ministers a draft resolution to amend the "Regulations on the use of special devices in the protection of public order". The resolution was adopted on the following day.

[38] For further information on the "Draconian" laws adopted in January 2014, see IAP Information Note No. 9.
[39] Decision of the Verkhovna Rada no. 730-VII of 16 January 2014.
[40] While Mr Moskal published a form of report on his personal webpage, it is not clear whether any report was finally adopted by this temporary Commission.

57. In the morning of 22 January 2014 the Berkut special forces attacked the protesters, but the latter soon regained their positions. In the afternoon of the same day, the law enforcement officers again forced protesters down Hrushevskoho Street and a group of officers destroyed a medical centre in the National Library.

(a) Kidnapping of Ihor Lutsenko and Yurii Verbytskyi

58. Early in the morning on 21 January 2014 Ihor Lutsenko accompanied Yurii Verbytskyi (both being EuroMaidan activists) to Oleksandrivska Hospital in Kyiv since Mr Verbytskyi needed treatment for an eye injury. While in the hospital, the two men were attacked and taken away by a group dressed in civilian clothes. After being severely beaten and tortured, Mr Lutsenko was left in a forest in the vicinity of Kyiv, from where he managed to get help. On 22 January the body of Mr Verbytskyi was found in a forest in the Boryspilskyi District of Kyiv Region. A preliminary hospital report recorded that he had died of hypothermia[41].

(b) Deaths on Hrushevskoho Street

59. On 22 January 2014 Serhii Nihoian and Mykhailo Zhyznevskyi were killed by gunshots on Hrushevskoho Street. Roman Senyk and Oleksandr Badera received firearm injuries and later died in hospital.

60. The following day the MoI reported that Mr Nihoian had received two penetrating grapeshot injuries to the lungs and heart, and one non-penetrating wound to the head. Mr Zhyznevskyi had received a perforating wound to the heart from a hunting weapon.

(c) The Mykhailo Havryliuk incident

61. At around 1:00 p.m. on 22 January 2014 servicemen of the Internal Troops (unit no. 3028) apprehended one of the protesters known as "Kozak Havryliuk", beat him, stripped him naked (the temperature at the time was approximately -10°C) and mocked him, while filming, before detaining him. Recordings of the incident were immediately available and widely viewed on the Internet and on television. There were reports that other protesters had suffered similar treatment[42]. On the following day the MoI apologised for the incident. It was stated in a press release that an internal investigation had been initiated[43].

(d) Kidnapping of Dmytro Bulatov

62. On 22 January 2014 an Automaidan activist, Dmytro Bulatov, was kidnapped by unknown persons in Kyiv on the crossroads of Maiakovskoho Avenue and Vatutina Street. According to the MoI press release of 1 February 2014, Mr Bulatov was suspected of organising mass disorder and had been put on a wanted list on 24 January 2014. He was found on 30 January 2014 near Vyshenky village in the Boryspilskyi District near Kyiv. Mr Bulatov was hospitalised and diagnosed with concussion, slash wounds to his left cheek, injuries of the chest and head, perforating wounds to his hands and eye injuries. Part of his right ear had been cut off. He said that he had been tortured by unknown persons[44].

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[41] HRW reported on this incident in some detail. See paragraphs 338-340 below as regards the investigation into this incident.

[42] See e.g. http://www.bbc.com/news/world-europe-25858875; CPT Report on the visit to Ukraine of 18-24 February 2014.

[43] See paragraphs 300-315 below as regards the investigation into this incident.

[44] See paragraphs 336-337 below as regards the investigation into this incident.

2. Other events

63. Between 22 and 27 January 2014 approximately ten official buildings were seized by protesters. On 25 and 26 January 2014 activists from the movement *Spilna sprava* seized the buildings of the Ministry of Energy and the Ministry of Justice.

64. On 24 January 2014 representatives of the MoI met with representatives of the Red Cross[45]. The latter were informed that, since 19 January 2014, 285 police officers had needed medical assistance and 104 of them had been hospitalised. It was also noted that 1,340 police officers had been diagnosed with pneumonia, various infectious diseases and hypothermia.

65. In her report of 25 January 2014, the Ombudsperson reported to the Kyiv City Prosecutor's Office on the ill-treatment of protesters on their arrest, noting that the majority of detainees in Kyiv city emergency hospital had complained of having suffered bodily injuries inflicted by law enforcement officers.

66. The media reported that, on 27 January 2014, the Cabinet of Ministers had decided to increase the number of Berkut special forces to 30,000 persons[46].

67. On 28 January 2014 the Prime Minister, Mykola Azarov, resigned.

68. By letters of 29 and 30 January 2014, the Ombudsperson requested the MoI and the PGO to prevent human rights violations and to conduct investigations in respect of the following issues: the lengthy detention of those arrested in police vehicles and trucks in air temperatures below freezing, without access to water or to the toilet; the disproportionate use of force against those who had already been arrested and who did not offer resistance; and the lack of timely medical assistance.

F. The events of February 2014

69. On 6 February 2014 an explosive device in a package labelled "Medicine" exploded in the Trade Union Building. Two protesters were injured.

70. Confrontations between the protesters and the police continued.

1. The events of 18-19 February 2014

71. On 18 February 2014 protesters went to the Verkhovna Rada to protest against delays in restoring the 2004 amendments to the Constitution of Ukraine. This resulted in violent clashes between the protesters and law enforcement officers. Eight persons were killed and more than 1,000 injured. The office of the Party of Regions was raided and burned. The body of a guard was found in the building after the fire had been extinguished.

72. From 4:00 p.m. the Kyiv metro system was shut down completely.

73. At 5:00 p.m. the MoI and SSU published a call "to stop the rioting by 6:00 p.m", failing which "order will be restored with all the means provided by law".

74. At around 8:00 p.m. police forces launched an attack on Maidan. At around midnight Internal Troops were deployed around the Trade Union Building and SSU Alpha force officers were deployed onto the roof of the building with the objective of clearing it. A fire broke out and the Alpha troops withdrew[47]. Since the Trade Union Building had served as the headquarters and medical centre for the protesters, there were numerous allegations that injured persons had been unable to escape and had died in the fire. According to the PGO, on 19 and 21 February 2014, two dead bodies were found in the building. The bodies were badly

[45] http://mvs.gov.ua/mvs/control/main/uk/publish/article/966034 (in Ukrainian)

[46] See e.g. http://zn.ua/POLITICS/azarov-bez-postoronnih-glaz-zaslushaet-doklad-mvd-o-situacii-v-ukraine-137523_.html.(in Russian)

[47] The investigation into the incident is outlined at paragraphs 237-242 below.

charred but there was no evidence of any firearm or other injuries. The PGO also maintained in their submissions that 13 further persons had been killed during the storming of Maidan.

75. In the evening of 18 February 2014 around 300 titushky gathered at the junction of Volodymyrska and Velyka Zhytomyrska Streets. At around 3:00 a.m. on 19 February 2014, a journalist from the newspaper *Vesti*, Viacheslav Veremii, was filming the titushky with his telephone. A stun grenade was thrown under Mr Veremii's car and the titushky attacked the car with wooden sticks. Messrs Demianov and Lymarenko, who were with Mr Veremii, were injured, Mr Veremii was also beaten and, having attempted to escape, was shot and died later in hospital.

76. At the same time other titushky shot at protesters on Mykhailivska Square. As a result, four persons were injured.

77. On the night of 18/19 February 2014 two traffic police officers were shot at their post by an unknown driver.

78. Berkut officers, who had temporarily seized the Ukrainian House in European Square, left it. The Museum of Kyiv, which was situated in this building, was vandalised and part of the exhibition disappeared.

79. The negotiations which had taken place between President Yanukovych and the opposition leaders failed to result in an agreement.

80. The media reported that, at around 1:00 p.m. on 19 February 2014, the SSU had announced an anti-terrorist operation[48].

81. The Acting Minister of the Interior announced that combat weapons had been provided to law enforcement officers, stating: "We signed the relevant orders as part of the Antiterrorist Centre's work: the law enforcement officers have been provided with combat weapons, and they will be used in accordance with the Law on Police"

2. The events on Instytutska Street on 20 February 2014

82. The day of 20 February 2014 was declared by the President's decree to be a day of mourning for the deaths and injuries which had occurred during the protests.

83. According to the PGO[49], at about 8:00 a.m. members of the Internal Troops moved up Instytutska Street. The protesters followed and took over the Zhovtnevyi Palace. The retreat of the Internal Troops up Instytutska Street was covered by Berkut officers in a black uniform with yellow armbands. The PGO claims that a Berkut unit commanded by Dmytro Sadovnyk, was involved and that Berkut officers moved up Instytutska Street armed with sniper and Kalashnikov rifles and shooting, in particular, from the barricades situated near Khreshchatyk metro station.

84. The PGO submitted that, between 8:20 a.m. and 10:00 a.m., 49 persons were shot dead on Instytutska Street and 90 persons received firearm injuries.

85. There were allegations that snipers had been situated in or on the roof of the Ukraina hotel and on the roofs of the nearby buildings. The PGO maintained that many law enforcement formations had been deployed to the area, with armed sniper units, and that, when questioned, they denied using their weapons and stated that they had not seen any other unknown snipers.

86. This was the most serious episode of the Maidan demonstrations and constituted a turning point for the demonstrations and for the then government.

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[48] See e.g. http://dw.de/p/1BBeQ (in Ukrainian) There was no relevant announcement on the SSU's website but, on 21 February 2014, the SSU published a statement to the effect that the level of readiness to combat the terrorist threat, which had been announced on 19 February 2014, had been reduced.

[49] See paragraphs 243-248 below.

87. Late in the evening of 20 February 2014 the Verkhovna Rada adopted a decision no. 740-VII "On condemnation of the use of violence which led to the loss of human life". The Parliament condemned all manifestations of violence which had led to deaths and injuries. It decided, *inter alia*, that:

- the Cabinet of Ministers, the SSU, the MoI, the Ministry of Defence and all their subordinate units should stop the use of force and should not in future have recourse to the use of force;
- the SSU should stop its anti-terrorist operation;
- the MoI should stop blocking the streets and the law enforcement officers should return to their usual places of deployment;
- the PGO should carry out a comprehensive investigation of the deaths and injuries of protesters as from 30 November 2013 and should inform the Verkhovna Rada twice a month about the progress of the investigation until its completion.

88. In the internal investigation report of 24 April 2014, the MoI indicated that between 29 November 2013 and 20 February 2014 around 11,000 law enforcement officers had been involved in public order protection in Kyiv[50]. The Ministry of Defence informed the Panel that the Armed Forces had not participated in the events on Maidan.

G. Maidan-related deaths and injuries/missing persons

89. From the end of February 2014 to the present date, various international bodies and NGOs as well as authorities and national NGOs, have given a wide variety of figures as regards the number of Maidan-related deaths and injuries. The criteria on which these statistics are based (the category of person, when and where) are often different or not specified, so that comparing or compiling this statistical information is often not useful. There remains therefore some uncertainty about the numbers of persons killed or injured in connection with the Maidan demonstrations.

1. Civilians

(a) Deaths

90. According to the information made public by the MoH in April 2014[51] and widely referred to since then, "since 30 November 2014, 106 persons perished and died on the territory of Ukraine". As a result, those protesters whose death was allegedly related to the Maidan protests received the symbolic name of the "Heaven's Hundred".

91. According to the information submitted to the Panel by the MoH, between 21 November 2013 and 21 February 2014, 100 civilians died. The place and circumstances of their death were not, however, indicated. This figure represented those whose deaths had been approved for inclusion in the list established under the Decree of the Ministry of the Social Policy of 8 May 2014, relating to the grant of lump-sum assistance to the victims' families.

92. At a press conference of 19 November 2014 the PGO confirmed that criminal proceedings had been instituted in respect of the deaths of 77 civilians between end of

[50] In particular, 2,800 Kyiv City police officers; 1,700 Berkut officers from the regions; 1,150 patrol police officers; and 5,100 members of the Internal Troops.

[51] http://www.moz.gov.ua/ua/portal/pre_20140414_b.html (in Ukrainian)

January and end of February 2014, including 67 persons who had been shot. The murder of Mr Verbytskyi was being separately investigated by the MoI[52].

93. The joint NGOs submissions to the Panel of 10 June 2014, claimed that 94 civilians had died in Kyiv as a result of the demonstrations from 21 November 2013 to 22 February 2014.

94. The EuroMaidan SOS Internet site updated to 10 February 2015 contained information about 77 protesters who had died in Kyiv after being shot or as a result of injuries received. The site reported a high probability of a causal link between the protests and 12 other deaths. Two persons had died a violent death during the protests but had not been participants in the protest[53].

95. In sum, while certain sources refer to approximately 100 protest-related deaths in Ukraine, there would appear to be no dispute as to a causal link between the demonstrations and 78 deaths. That causal link is suggested only in relation to possibly 14 more Maidan-related deaths.

(b) Injuries

96. Statistics in the public domain and submitted to the Panel, as to the number of Maidan-related injuries, are even more varied. This is not assisted by the fact that different bodies interpret the scope of Maidan-related injuries differently. In addition, numerous protesters sought medical assistance otherwise than in official institutions as they feared later persecution for involvement in the demonstrations. The joint NGO submissions noted the breadth of alternative healthcare facilities that existed during the demonstrations, including medical aid posts in Maidan itself, in the Trade Union Building, the Kyiv City State Administration and St. Michael's Cathedral.

97. As to the available figures, the Panel notes that, according to the MoH submissions, between 30 November 2013 and 17 February 2014, 991 persons had sought medical assistance for various reasons in the Maidan area and its vicinity. Moreover, the MoH had received a "tentative list" of persons who had suffered serious injuries during the events in Kyiv from 21 November 2013 to 21 February 2014: the list comprised 255 persons but did not include persons who had received medical aid in other healthcare institutions, without specifying where they had been injured.

98. In its letter of 15 July 2014 the Kyiv City Prosecutor's Office to the Ombudsperson noted, without indicating the period covered, that 1,525 civilians had received injuries. At a press conference held on 19 November 2014, the PGO submitted that criminal proceedings had been instituted in respect of more than 900 cases of injuries (including 181 persons with firearm injuries), which had occurred between 30 November 2013 and 20 February 2014.

99. In the joint submission of the NGOs to the Panel, it was stated that, according to the information provided by the Department of Health of Kyiv City State Administration, which had the responsibility for the overall coordination of the medical assistance provided, 2,394 calls of emergency teams had been registered during the mass protest actions in Kyiv and 1,890 persons had been treated in the hospitals of Kyiv. However, it is unclear whether those figures relate exclusively to Maidan protesters.

[52] The main PGO casefile 228 (see paragraphs 210-290 below) concerns 77 civilian deaths including: three deaths on Hrushevskoho Street on 22 January 2014 (Nihoian, Zhyznevskyi and Senyk); eight persons who died on 18 January 2014; 15 persons who died during or allegedly because of storming of Maidan and the fire in the Trade Union Building on 18-19 February 2014; two persons who were killed by titushky on 19 February 2014; and 49 persons died from gunshot wounds in the area of Instytutska Street on 20 February 2014.

[53] http://euromaidansos.org/uk/node/73 (in Ukrainian)

2. Journalists

100. The Panel notes that, during and after the protests, there have been numerous allegations that journalists were expressly targeted by law enforcement officers. In particular, in a statement issued on 2 December 2013, the representative on freedom of the media for the OSCE expressed concern about police violence against reporters at the demonstrations in Kyiv and called on the Ukrainian authorities to investigate the attacks on journalists. The statement recorded that, by 2 December 2013, 40 journalists had been physically assaulted and severely injured while covering the demonstrations in Kyiv[54]. A list of injured journalists was also published by the Ukrainian mass-media[55].

101. The Verkhovna Rada Committee on Legislative Support of Law Enforcement submitted to the Panel that, between 19 and 21 January 2014, 17 foreign journalists had requested medical assistance. The Committee further submitted that, on 36 occasions, Ukrainian and foreign journalists had been assaulted by police officers despite their visible "Press" signs: their equipment had been destroyed, they had been injured by the explosion of stun grenades, and they had been beaten and dragged along the floor.

102. Moreover, according to the MoI press release of 12 March 2014, between 21 November 2013 and 12 March 2014, there were 165 reports of allegedly unlawful actions against journalists, including 93 reports concerning the events in Kyiv. 74 criminal proceedings had been instituted following those reports.

103. The assaults on journalists and medical personnel were also documented by various human rights organisations[56].

104. The joint NGO submission to the Panel annexed a list (provided by the Institute of Mass Information) of 206 journalists/media employees who had been injured and/or had their equipment damaged in areas of clashes in Kyiv and other cities of Ukraine between 23 November 2013 and 24 February 2014.

105. The Panel notes that the above figures indicate some 200 cases of attacks on media personnel during the course of the Maidan protests.

3. Law enforcement officers

106. In its submissions of 9 December 2014 the MoI stated that 13 law enforcement officers died from gunshot wounds in Kyiv. Other sources had previously reported that 16[57] or 17[58] officers had been killed, though those numbers appear to have included officers from other cities. According to EuroMaidan SOS, 15 law enforcement officers were killed during the protests in Kyiv and 2 were killed in Lviv. As to injuries, in a letter of 15 July 2014 from the Kyiv Prosecutor's Office to the Ombudsperson, it was reported that 992 law enforcement officers had sought medical assistance, including 280 persons with firearms injuries.

107. In their most recent submissions to the Panel, the MoI stated that 919 law enforcement officers had been injured between 30 November 2013 and 23 February 2014.

4. Missing persons

108. During the Maidan protests there was a relatively high level of claims that persons had disappeared for Maidan-related reasons. The Joint NGO submissions reported that, while

[54] http://www.osce.org/fom/109108.
[55] See http://news.liga.net/news/politics/933645-v_kieve_postradali_bolshe_desyatka_zhurnalistov_spisok.htm (in Russian).
[56] See e.g. http://www.hrw.org/news/2014/01/30/ukraine-police-attacked-dozens-journalists-medics.
[57] See Commissioner for Human rights of the CoE report, 4 March 2014.
[58] See report "On human rights situation in Ukraine" of the OHCHR, 15 June 2014

EuroMaidan SOS had received 1,124 applications during the Maidan period about missing persons who were believed to be participants in the protests, in the vast majority of cases the "missing" person (or the body) had been located.

109. Since then, the reported figures have gone down substantially. The joint NGO submissions of May 2014 state that 39 persons with whom relatives had lost contact during the Maidan events were still missing. At the meeting with the Panel on 4 August 2014 the NGOs reported that 24 persons were still missing.

110. However, at the meeting with the Panel on 4 September 2014, the PGO stated that, despite the information provided by the mass media, not a single person was still missing, everyone having been identified or found. By the end of January 2015, EuroMaidan SOS reported that 27 persons were still missing. The issue of missing persons was addressed by the Minister of the Interior at a joint meeting of the Verkhovna Rada Committees on 10 December 2014, when he indicated that eight persons were missing for Maidan-related reasons.

111. The Panel notes that, although the statistics as regards the numbers of persons missing for Maidan-related reasons still vary considerably, it does not appear to be disputed that at least eight persons are still missing following their participation in the Maidan events.

H. The change of government

1. Events of 21 February 2014: end of the Mr Yanukovych's presidency

112. On 21 February 2014 President Yanukovych and the opposition leaders signed a compromise agreement after hours of negotiations. The agreement provided for the restoration of the 2004 Constitution with more power to be given to the Parliament; the formation of a new coalition government within ten days; the completion of constitutional reform by September 2014; the holding of an early Presidential election by December 2014; an investigation into the acts of violence, to be conducted under the joint monitoring of the government, the opposition and the Council of Europe; a veto on imposing a state of emergency; an amnesty for protesters arrested since 17 February 2014; the surrendering of public buildings occupied by protesters; the forfeiture of illegal weapons; the passing of new electoral laws and the formation of a new Central Election Commission. The three EU foreign ministers (Radoslaw Sikorski of Poland, Laurent Fabius of France and Frank-Walter Steinmeier of Germany) witnessed the document. The representative of the Russian Federation was also present but did not sign the agreement.

113. On the same day, Parliament voted unanimously to return to the 2004 Constitution and to suspend the Acting Minister of the Interior, Vitalii Zakharchenko. Changes were introduced to the Criminal Code ("CC"), allowing for the release of an opposition politician, Yuliia Tymoshenko.

114. A number of Maidan protesters did not accept the compromise. In the evening of 21 February, one of the protesters announced from the stage that President Yanukovych would have to leave by 10:00 a.m. the following day or he would be removed by force.

115. On the night of 21/22 February 2014 Mr Yanukovych fled.

2. 22-24 February: new government

116. On 22 February 2014, the Speaker of Parliament, Volodymyr Rybak, submitted his resignation, citing illness. Oleksandr Turchynov, was elected as Speaker. Since Mr Yanukovych's whereabouts were unknown, the Parliament decided that he had abandoned his duties as President. Presidential elections were fixed for 25 May 2014.

A footage appeared in which Mr Yanukovych described the events as a "coup d'Etat". There were media reports that he was in Kharkiv.

117. On the same day, Parliament also dismissed Mr Pshonka as Prosecutor General. Oleh Makhnitskyi was appointed as Acting Prosecutor General and Arsen Avakov, as Acting Minister of the Interior.

118. The Minister of Defence, Pavlo Lebediev, allegedly fled to Crimea.

119. Media reported that Mr Pshonka and the Minister of Revenues and Duties, Oleksandr Klymenko, had been stopped at the Russian border while trying to flee the country. The State Border Service stated that Mr Yanukovych had also tried to flee on a charter flight in Donetsk, but had been stopped by border guards. Mr Yanukovych had then left by armoured car, his whereabouts being unknown. The former Minister of the Interior, Mr Zakharchenko, had also attempted to fly out of Donetsk and had been prevented from doing so for similar reasons.

120. On 22 February 2014 Mrs Tymoshenko was released from prison and addressed the crowd on Maidan.

121. On 23 February 2014, Mr Turchynov was voted by Parliament as Acting President of Ukraine.

122. While Parliament voted to repeal the controversial Law "On Languages' Policy", the Acting President later vetoed this measure. On the same day the Verkhovna Rada dismissed a number of Ministers and nationalised Mr Yanukovych's private estate.

123. On 24 February 2014 the Verkhovna Rada appointed Valentyn Nalyvaichenko as the new Chief of the SSU[59].

124. On 26 February 2014 the Berkut special forces were disbanded by decree of the Minister of the Interior. Mr Makhnitskyi said at a press conference on the same date that all former Berkut officers would be subjected to a vetting process.

I. Post-Maidan events

125. Several major events which post-dated those in Maidan had a particular impact on the work of the investigating authorities and are accordingly of relevance to the Panel's review of those investigations.

1. Annexation of Crimea

126. After the change of government, pro-Russian demonstrations took place in the Autonomous Republic of Crimea ("ARC"). On 27 February 2014 armed persons seized the buildings of Parliament and of the Council of Ministers of the ARC. Numerous persons in military uniforms and with military equipment, but without any insignia, were noted on the ARC's territory. On 17 March 2014 the Parliament of the ARC proclaimed independence. On 18 March 2014 the treaty on joining the Russian Federation was signed in Moscow. On 15 April 2014 the Verkhovna Rada passed a Bill declaring the Crimea peninsula to be territory temporarily occupied by the Russian Federation.

127. These events triggered numerous criminal proceedings concerning issues such as State treason[60].

[59] Mr Nalyvaichenko had previously occupied this post from 2006-2010.

[60] For example, on 3 March 2014 the PGO announced that criminal proceedings for State treason had been instituted against the former Ukrainian Navy commander, Denys Berezovskyi. Similar proceedings had also been instituted against the Acting Head of the State Border Service in the ARC.

2. Events of 2 May 2014 in Odesa

128. On 2 May 2014 a football match was organised between two football teams, *Chornomorets*, Odesa, and *Metalist*, Kharkiv. The football fans planned a joint pro-unity rally before the match. Clashes broke out with pro-Russian groups. These culminated in the burning of the Trade Union Building. Several persons died in Odesa that day.

129. The investigations into those events are pending[61].

3. Presidential elections

130. On 25 May 2014 the presidential elections took place as result of which Petro Poroshenko was elected President of Ukraine. In an television interview on 2 June 2014, Mr Makhnitskyi, the then Prosecutor General, stated that there had been 50 complaints about breaches of the electoral laws during the election[62].

131. A press release of the MoI of 14 January 2015 stated that 137 criminal proceedings had been instituted on election-related matters.

4. Conflict in the Eastern Regions

132. From the beginning of April 2014, armed pro-Russian groups started to seize official buildings in the East of Ukraine and announced the creation of the Donetsk and Lugansk People's Republics. In response, an anti-terrorist operation was announced by the Ukrainian government. The confrontation has become a serious military conflict.

133. On 2 August 2014 the then Prosecutor General, Mr Yarema, announced at a press briefing that the PGO and the SSU had instituted more than 1,500 criminal proceedings for various crimes related to the anti-terrorist operation. In November 2014 the Prosecutor General announced investigations by the military prosecutors of the PGO into a series of events in the eastern regions where there had been a high number of casualties[63]. In an interview to the web-newspaper *Ukrainska Pravda* on 11 December 2014, Mr Yarema stated that the military prosecutors were investigating 364 cases, 62 cases having being sent to a court[64]. The OHCHR reported that at least 5,665 persons had been killed and 13,961 persons wounded from mid-April 2014 to mid-February 2015[65].

5. MH17

134. On 17 July 2014 a Malaysia Airlines flight from Amsterdam to Kuala Lumpur was shot down near Torez in the Donetsk Region of Ukraine over territory controlled by pro-Russian separatists, killing all 283 passengers and 15 crew on board.

135. A criminal investigation is being conducted jointly by five countries – Australia, Belgium, Malaysia, the Netherlands and Ukraine. Apart from personnel, the PGO also provides logistical support for the investigation.

6. Parliament elections

136. Further to a Presidential decree, the Verkhovna Rada was dissolved and early parliamentary elections were scheduled for 26 October 2014.

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[61] Although the events in Odesa are also covered by the Panel's Mandate (see the Introduction to this Report above), this Report concerns only the events in Kyiv between 30 November 2013 and 22 February 2014.
[62] See video (in Ukrainian).
[63] See http://www.gp.gov.ua/ua/news/video.html?_m=publications&_t=rec&id=147069 (in Ukrainian)
[64] http://www.pravda.com.ua/articles/2014/12/11/7047117/ (in Ukrainian)
[65] See report "On human rights situation in Ukraine" of the OHCHR of 15 February 2015.

137. On 8 November 2014 the MoI stated that almost 400 criminal proceedings concerning breaches of the electoral laws had been initiated[66].

7. Investigation of economic crimes

138. Since the change government, the PGO has been investigating allegations of complex and serious economic crimes by the former authorities. The European Union and several States agreed to make freezing and injunctive orders in relation to accounts and assets abroad.

139. At the end of 2014 the State Committee for Financial Monitoring published a report on the results of its work in 2014. It reported that the financial resources seized during the investigation of money laundering and embezzlement of State finances and property, by the former President of Ukraine, Mr Yanukovych, his relatives and former officials, amounted to 1.49 billion US dollars[67]. In a recent speech to Parliament on 6 February 2015, the Prosecutor General referred to numerous casefiles concerning the embezzlement of State property. The losses suffered by the State from economic crimes amounted to, according to him, UAH 100 billion. He indicated that approximately 104 million US dollars, 122 million Swiss francs, and 22 million euros held in foreign bank accounts, and more than UAH 6 billion and 2 billion US dollars held in Ukrainian bank accounts, had been seized.

II. RELEVANT DOMESTIC LAW ON PRE-TRIAL INVESTIGATIONS[68]

140. A pre-trial investigation, the initial stage of the criminal procedure, commences as a rule with the entry of information into the Unified Register of Pre-Trial Investigations (Unified Register). Under Article 214 § 1 of the CPC a prosecutor or an investigator is required to enter the information into the Unified Register within twenty four hours after he or she receives notice of a crime or discovers circumstances which may attest to the occurrence of a crime.

141. Article 38 of the CPC designates four bodies whose investigative departments are entitled to carry out pre-trial investigations. They are the law enforcement authorities (MoI), the Security Service of Ukraine (SSU), the authorities supervising compliance with tax law, and the State Bureau of Investigations.[69] Pending the establishment of the State Bureau of Investigations, its function remains with the public prosecution service.

142. According to Article 216 of the CPC, the law enforcement authorities carry out the pre-trial investigation of offences which entail criminal responsibility, unless the investigative jurisdiction is allocated to other investigating bodies. The SSU investigates, *inter alia*, cases concerning crimes against national security, peace, international order and territorial integrity. The State Bureau of Investigations will investigate crimes committed by officials who occupy a particularly important post in the state service[70] as well as by judges and officials of the law enforcement authorities.

143. Pre-trial investigations may be carried out by a single investigator or by an investigating group, the latter being created, for example, in complex cases. According to

[66] See video (in Ukranian)
[67] http://www.sdfm.gov.ua/news.php?news_id=2755&lang=uk (in Ukrainian)
[68] For a detailed description of domestic law and procedure with regard to pre-trial investigations, and for CoE comments on certain provisions of the CPC adopted in 2012, see IAP Information Note No. 2 and IAP Information Note No. 3.
[69] The State Bureau of Investigations is not yet functioning: the CPC provides for its establishment, at the latest, by November 2017.
[70] The list of such officials is contained in Article 9 of the Law of Ukraine on State Service.

Article 40 of the CPC, the investigator in charge of a particular pre-trial investigation is to act independently when taking a procedural decision. He or she may only receive instructions from bodies authorised to give them. Certain actions may be taken by an investigator only with a prosecutor's approval. An investigator is obliged to comply with a prosecutor's instructions given in writing.

144. The public prosecution service, apart from carrying out pre-trial investigations pending the creation of the State Bureau of Investigations, supervises and provides procedural guidance in pre-trial investigations conducted by other investigating bodies and conducts the prosecution of the case in court.

145. The powers of a prosecutor, as regards supervision of pre-trial investigations, are set out in Article 36 of the CPC. A prosecutor is authorised, *inter alia*, to have full access to case materials, to instruct investigating authorities and operative units, to quash unlawful and unfounded decisions of an investigator, to approve, refuse to approve or amend an indictment and to submit the indictment to court.

146. According to Article 36 § 5 of the CPC the Prosecutor General, his deputies, regional prosecutors or prosecutors of the same level are entitled to transfer an investigation to another pre-trial investigation authority, in the event of a lack of effective pre-trial investigations.

147. Article 36 of the CPC and Articles 6 and 7 of the Law on the Public Prosecution Service of 1991 provide for the independence of public prosecutors.

148. According to Article 41 of the CPC, in the course of pre-trial investigations, investigators and prosecutors are assisted by operative units. Operative units carry out investigative actions upon written instructions of an investigator or prosecutor, which instructions are obligatory for them. Operative units may not carry out investigative acts on their own initiative or address a prosecutor or investigator with such a request.

149. Under the above mentioned Article, operative units of the law enforcement authorities, the SSU, tax and customs authorities, the State Penitentiary Service and the State Border Guard Service are entitled to carry out investigative actions. The Law on Operative and Detective Actions of 1992 specifies the departments which carry out investigative actions (Article 5).

150. Having collected sufficient evidence allowing a person to be considered a suspect in a criminal case, a written notification of suspicion is issued to the suspect according to the procedure set out in Articles 276-279 of the CPC. The notification of suspicion is carried out in two stages: the drawing up of the written notice of suspicion itself and the serving of the notice on the suspect. The notice of suspicion should be given to the suspect on the same day it was drawn. If the suspect has absconded, the notice is served on the suspect after he or she is found.

151. Under Articles 280-282 of the CPC an investigator or prosecutor may suspend pre-trial investigations in certain cases: for instance, if a suspect is hiding from the investigating authorities and/or the court to avoid criminal responsibility and his location is unknown or in cases where there is a need to carry out procedural acts within the framework of international co-operation activities, such as extradition.

152. Article 217 of the CPC entitles a prosecutor to join several cases into one casefile at the pre-trial investigations stage (for instance, if materials concern several persons suspected of committing the same crime) or to separate cases (for instance, if the same person is suspected of committing several crimes).

153. Article 28 of the CPC provides that each procedural step and decision should be carried out and adopted, respectively, within reasonable time-limits. Under Article 219 of the CPC, pre-trial investigations concerning a crime should be completed within two months from the moment when a person is given a notice of suspicion. Depending on the gravity and complexity of the crime, that time-limit may be extended to six or twelve months.

154. The pre-trial investigation is completed when criminal proceedings are terminated or when one of the following documents is submitted to a court – an indictment, a request for the application of compulsory measures of a medical or educational character, or a request for release from criminal responsibility (Chapter 24 of the CPC).

155. Preliminary court proceedings and then the court trial follow, provided no grounds are found to terminate criminal proceedings or to release the person from criminal responsibility.

III. STRUCTURE AND STAFFING OF THE MAIN INVESTIGATING ORGANS[71]

A. Structure of the PGO[72]

156. The PGO heads the public prosecution service in Ukraine, which service is composed also of regional, district, inter-district, city district and military prosecution service offices. The structure of the PGO itself is determined by the Prosecutor General and has changed throughout the described period with the appointment of each successive Prosecutor General.

157. Since the change of government in February 2014, three Prosecutors General have been appointed to head the public prosecution service. The PGO itself has undergone structural and staffing changes on several occasions, which have also resulted in the change of senior officials leading and supervising Maidan-related investigations. The most recent developments of 2015 and described in detail below indicate that certain senior officials, who had been in charge of Maidan investigations at the outset but who had been removed from this task in 2014, were re-appointed to their initial posts in early 2015.

158. The description below outlines the structure of the PGO before the creation of the Special Investigations Division in the Main Investigation Department of the PGO. It also briefly describes the structure, functions and staffing of the newly established Special Investigations Division.

1. PGO leadership (between 22 February 2014 and present)

159. On 22 February 2014 the Verkhovna Rada passed a vote of no confidence in the then Prosecutor General, Mr Pshonka, owing to the failure of the prosecution service to react properly to the Maidan events, which resulted in his dismissal. Between 24 February and 18 June 2014 Mr Oleh Makhnitskyi held the position of Acting Prosecutor General. Mr Makhnitskyi was dismissed as Acting Prosecutor General by Presidential Decree of 18 June 2014.[73]

160. On 19 June 2014 Mr Vitalii Yarema was appointed Prosecutor General. On 10 February 2015 Verkhovna Rada approved Mr Yarema's dismissal and the President, with the subsequent approval of the parliament, appointed Mr Viktor Shokin as Prosecutor General. Mr Shokin had been a Deputy Prosecutor General and Head of the Main Department for Supervision of Criminal Proceedings since 26 June 2014.

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[71] The information is largely based on the PGO's submissions to the Panel.

[72] See Annex IV for information on the structure of the PGO. For a detailed description of the structure of the public prosecution service in Ukraine and its reform to date, see IAP Information Note No. 6 and IAP Information Note No. 7.

[73] After his dismissal as Acting Prosecutor General, Mr Makhnitskyi was appointed adviser to the President which post he held until 5 February 2015 when he was dismissed.

161. Out of nine Deputies of the Prosecutor General in office before 22 February 2014, six were removed at the end of February or the beginning of March 2014; three more were dismissed between July and September 2014.[74]

2. *Main Investigations Department of the PGO*[75]

162. Maidan-related crimes falling within the investigative jurisdiction of the PGO are investigated by its Main Investigations Department (MID). The MID currently consists of a Special Investigations Division (created in December 2014 to deal specifically with Maidan-related investigations) and a Major Crimes Division (which had been responsible for Maidan investigations before the creation of the SID).

163. The new Prosecutor General appointed in February 2015 again changed the MID structure by adding additional sub-departments responsible for procedural guidance and supervision.[76]

3. *Heads of the MID and MID senior officials*

164. At the end of February 2014, Mr Bahanets (who had been working in the public prosecution service for about 32 years) was appointed Deputy Prosecutor General. Mr Bahanets was leading the pre-trial investigations in Maidan cases. Mr Bahanets then persuaded Mr Mahknitskyi that the investigations would be better coordinated if he both led the pre-trial investigations into Maidan cases and was responsible for procedural supervision of those investigations. As a result, Mr Bahanets led the operative and supervisory aspects of the Maidan investigations.

165. After his appointment as Prosecutor General, Mr Yarema combined two of the posts – that of Deputy Prosecutor and the Head of MID. Thus, on 26 June 2014, Mr Bahanets became the Head of the MID and remained a Deputy Prosecutor General. At the same time, the function of procedural supervision over the pre-trial investigations into Maidan cases was removed from Mr Bahanets. On 25 August 2014 Mr Bahanets was appointed Head of the Main Department for Supervision of the Observance of Laws in the Enforcement of Court Decisions in Criminal Matters and Other Coercive Measures. Consequently, Mr Bahanets was no longer involved in the Maidan investigations. With the appointment of new Prosecutor General in February 2015, Mr Bahanets was again appointed to coordinate the work of the MID of the PGO, including the Maidan-related investigations.[77]

166. At the end of February 2014 Mr Shcherbyna was appointed Head of the MID of the PGO. Following the appointment of Mr Bahanets as Head of the MID, on 16 July 2014 Mr Shcherbyna was appointed Deputy Head of the MID. Mr Shcherbyna appeared before the Panel in that function on 4 September 2014: he did not appear at the follow-up meeting of the Panel with PGO representatives held on 8 September 2014. On 11 September 2014 the PGO decreed that his post was redundant and on 10 November 2014 Mr Shcherbyna was informed that he would be made redundant from the PGO as of 12 January 2015. Accordingly, from mid-September, Mr Shcherbyna was no longer involved in the Maidan investigations. Following the appointment of the new Prosecutor General in February 2015, Mr Scherbyna was re-appointed as head of the MID.[78]

[74] PGO submissions to the Panel.
[75] See Annex IV for structure of the MID.
[76] PGO official website: news of 13 February 2015.
[77] Interview of Mr Bahanets to Radio Svoboda on 17 February 2015.
[78] PGO official website.

167. From a review of the staff information submitted to the Panel by the PGO, it would appear that, following the dismissals and appointments of senior-level prosecutors in the MID of the PGO, all[79] senior officials of the MID in office at the end of February 2014 had left those positions by February 2015.

4. MID functions

168. The function of the MID is to carry out investigations into crimes falling within the competence of the PGO. The procedural supervision over investigations carried out by other investigating authorities (such as the MoI or SSU) is carried out by the Main Department for Supervision in Criminal Proceedings of the PGO.[80]

169. Neither the MID of the PGO, nor the PGO in general, has operative units in its structure. The MID of the PGO instructs the operative units of the MoI or of the SSU or other bodies to carry out any investigative acts required. The MoI operative units (from such departments as the Main Department on Fighting Organised Crime and the Department of Criminal Search) carried out operative acts under the PGO instructions in the course of the Maidan investigations of the PGO. SSU operative units have also assisted the MID of the PGO in searching for missing suspects. The members of such operative units are required to follow the instructions of the PGO investigators.

5. MID staffing and structural changes

170. At the end of February, when the investigations into the Maidan events commenced, the Major Crimes Division of the MID comprised two investigating units, each composed of 14 investigators. On 21 March 2014 a third investigating unit, composed of 14 investigators, was added.

171. The investigators from the first, second and third investigating units, numbering 42 investigators in total, were involved in the investigation of cases relating to the Maidan events that took place on 30 November 2013, 22 January 2014, and on 18-21 February 2014.

172. Subsequently, two more investigating units were established. As a result, the Major Crimes Division comprised five investigating units[81], amounting to a total of 67 investigators. According to the PGO's submissions to the Panel, between April and September 2014, 30 prosecutors from territorial prosecution offices (with experience of working as a prosecutor or an investigator ranging from four to nineteen years) were transferred to one of the five investigating units of the Major Crimes Department of the MID.

173. However, towards the end of 2014, it was considered that a more systematic and coordinated approach to the Maidan investigations was required. By September-October 2014, the number of investigators working exclusively on Maidan investigations had been reduced to three. Thus, on 8 December 2014 the Special Investigations Division ("SID") was created within the MID of the PGO. The function of the newly established SID is to carry out investigations into Maidan cases as well as into allegations of unlawful seizure of power and the embezzlement of State funds by the former government.

174. The SID is headed by Mr Horbatiuk: he has been working in the public prosecution service for about twenty years and was the head of the second investigative unit of the Major

[79] Except, it seems, for Mr Truba who, as at October 2014, was still the Head of the Major Crimes Division.
[80] This function of supervision in criminal proceedings of the prosecution is set out in Article 36 of the CPC.
[81] The first three units have each 14 investigators, the fourth unit has seven and the fifth unit has 18 investigators.

Crimes Division of the MID of the PGO. The SID consists of two investigative units and an analytical unit with 56 employees in total.[82]

175. The first investigative unit of the SID investigates Maidan-related crimes. The PGO submissions to the Panel describe its competence as being to investigate violent crimes against protesters from November 2013 to February 2014 by perpetrators and organisers; the killings of law enforcement officers; the unlawful prosecution of protesters; and other related cases which had been earlier assigned to other investigative authorities. 20 investigators of the SID (as well as 20 investigators and 15 operative officers from the MoI and 20 SSU operative officers) work exclusively on Maidan-related investigations.

176. The second investigative unit of the SID investigates the alleged crimes of high-ranking members of the former government such as unlawful seizure of power, systematic embezzlement and the adoption of legislation aimed at obstructing the Maidan demonstrations.

177. As to the staffing changes in the PGO in general, the Prosecutor General stated in January 2015 that 154 employees had been dismissed from the PGO following the coming into force of the Lustration Law in October 2014. He had earlier stated that more than 300 prosecutors would be dismissed by April 2015.

B. Structure of the MoI[83]

1. MoI leadership

178. Between 7 November 2011 and 21 February 2014 Vitalii Zakharchenko headed the Ministry of the Interior. On 21 February 2014 the Verkhovna Rada dismissed him. Arsen Avakov was appointed as Acting Minister. On 27 February 2014 Mr Avakov became the Minister of the Interior and he has held that post ever since then.

179. The Minister currently has six deputies. One of the Deputy Ministers – Vitalii Sakal – was appointed in April 2014. He has also been the Head of the MID of the MoI since the beginning of March 2014. In January and February 2014 Mr Sakal held the position of the First Deputy Head of the MID of MoI and was involved in the investigations of the killings of protesters in January 2014.[84]

180. Mr Vasyl Paskal, who had been the Head of the Department of Criminal Search in the MoI since 2012 under the former Minister of the Interior, was appointed Deputy Minister in December 2014.

181. At the end of February 2015, the Civil Council on Lustration under the Ministry of Justice challenged in court the failure of the Cabinet of Ministers to dismiss Messrs Sakal and Paskal, claiming that both Deputies should be dismissed under the Lustration Law that came into force in October 2014.[85]

[82] The SID comprises 56 employees: 43 investigators, seven prosecutors and six other state officials. In addition, 15 investigators from territorial prosecution service offices, five SSU investigators, 22 MoI investigators and 18 and 33 operative officers from MoI and SSU, respectively, were seconded to assist the Special Investigations Division in its work.

[83] See Annex VI for structure of the MoI.

[84] In January 2014 Mr Sakal issued statements on behalf of the MoI concerning the investigations into the killing on 22 January 2014 of Messrs Nihoian and Zhyznevskyi claiming that the victims had been killed by bullets which were not police equipment and that the police officers and Internal Troops located in that area had not been armed with service firearms. MoI press-release of 23 January 2014 (in Ukrainian only).

[85] Public Lustration Committee news report of 23 February 2015.

182. Mr Yarovyi was the head of the MoI Internal Troops between 2010 and 2012 and served as an adviser to Mr Zakharchenko between 2012 and 2014. In March of 2014 he was appointed Deputy Minister of the current Minister.[86]

2. MoI departments in charge of the Maidan investigations

183. Maidan-related investigations falling within the competence of the MoI are carried out by its Main Investigations Department (MID). The MID of the MoI is headed by Deputy Minister Sakal.

184. In contrast to the PGO, the MoI has operative units in its structure which the MID may instruct to carry out specific investigative and covert detective acts. The Law on Operative and Detective Acts of 1992 designates specific departments to carry out investigative actions (Article 5). The MID and operative units are designed to be institutionally independent: they are subject to a different chain of command, the Minister of the Interior being the ultimate superior.

185. The MoI also includes within its structure the State Scientific and Research Forensic Centre. The Centre is structurally separate from other MoI departments or operative units. The Head of the Centre is appointed and dismissed by the Minister of the Interior and the Centre is responsible directly to the Minister. In the course of the Maidan investigations, PGO investigators requested this Centre to carry out various examinations.

186. The PGO submitted to the Panel that, at the beginning of the investigations into the Maidan cases, 15 MoI investigators were seconded to the Major Crimes Division of the MID of the PGO to assist in Maidan-related investigations; none of those seconded had been involved in the unlawful prosecution of protesters during the Maidan demonstrations. According to the PGO submission to the Panel, in December 2014, 22 MoI investigators and 18 MoI operative officers were seconded to the newly established SID of the PGO.

187. The MoI MID comprises 182 posts, a number that has not changed, according to MoI submissions to the Panel, for the past three years.

188. As of 1 March 2014 the number of officials employed by the MoI was 151,932. According to the MoI submissions to the Panel, by 1 November 2014, 15,939 employees (some 13 %) had been dismissed. It is unclear whether these dismissals were for lustration or other reasons.

189. On 14 November 2014 the MoI issued Decree no. 1229 on the implementation of the Lustration Law. According to this decree, officials of the MoI were to be inspected by 31 January 2015 and officials employed in the MoI territorial departments by May 2015. At the end of January 2015, the Minister of the Interior stated that about 140,000 MoI employees were subject to lustration. Following the first stage of lustration, 97 MoI officials were dismissed from leadership positions. The second stage of the lustration process is to be concluded by April-May 2015.[87]

3. MoI procedure for internal inquiries[88]

190. The internal inquiry procedure within the MoI is regulated by the Instruction on the Procedure for the Conduct of Internal Inquiries in the Law Enforcement Authorities of Ukraine, adopted by Decree No. 230 of the Minister of the Interior of 12 March 2013.[89]

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[86] MoI official website.
[87] Radio Svoboda news report of 28 January 2015.
[88] For detailed information about the MoI internal inquiry procedure, see IAP Informaton Note No. 4.
[89] http://zakon4.rada.gov.ua/laws/show/z0541-13 (in Ukrainian only).

191. An internal inquiry is carried out to determine whether a law enforcement official has committed a disciplinary offence. It must be ordered when there has been a death or injury of a law enforcement official. An internal inquiry is also required to be ordered where criminal proceedings have been instituted against a law enforcement official and when firearms, special means or force have been used by law enforcement officials and when weapons or special means issued to such an official have been lost.

192. The internal inquiry shall be completed within one month of its being ordered, with a possible extension for a maximum period of another month. If the law enforcement official is found to be at fault, he or she is disciplined. If, in the course of an internal inquiry, it is established that the disciplinary offence committed may also constitute a crime or an administrative offence, the official responsible for the conduct of the inquiry submits a proposal to the superior who has ordered the inquiry to take relevant measures under the criminal or other relevant legislation.

193. In practice, the public prosecution service may also order the conduct of an internal inquiry within the law enforcement bodies. The internal inquiry report, indicating elements of any criminal offence, is submitted to the public prosecution service.

C. Structure of the SSU

1. Structure[90]

194. Between 2013 and the end of February 2014, the SSU was headed by Mr Yakymenko until he left the country. Since February 2014 Mr Valentyn Nalyvaichenko has been the Chief of the SSU. Mr Nalyvaichenko had previously been the head of the SSU between December 2006 and March 2010.

195. The SSU has investigating and operative departments. Under the CPC, the following investigations fall within the scope of the investigative jurisdiction of the SSU: crimes against national security, peace, humanity and international order; cases concerning trafficking and terrorist acts, as well as crimes of treason, spying and disclosure of state secrets; and crimes relating to the creation and use of weapons of mass destruction.

196. The SSU operative departments carry out operative and investigative acts on instructions given by investigators, including PGO investigators. In the course of the Maidan investigations, the SSU operative units assisted the PGO in searches for missing suspects.

197. In December 2014 the SSU seconded five investigators and 33 operative officers to the newly established SID of the PGO.

198. According to the submissions of the Chief of the SSU to the Panel, 2,500 SSU officials have been recently dismissed, including 108 from leading managerial positions.

2. SSU procedure for internal inquiries[91]

199. The conduct of an internal inquiry in the SSU is regulated by the Directive on Internal Inquiry in the SSU, adopted by SSU Decree No. 547 of 16 July 2008.[92] The Directive covers internal inquiries conducted with regard to military servicemen of the SSU.[93]

[90] See Annex V for detailed information about the structure of the SSU.
[91] For detailed information about the internal inquiry procedure in the SSU, see IAP Information Note No. 5.
[92] http://zakon3.rada.gov.ua/laws/show/z0709-08 (in Ukrainian only).
[93] According to Article 19 of the Law of Ukraine 'On the Security Service of Ukraine', the staff of the SSU includes military servicemen as well as employees who have concluded a labour contract with the SSU.

200. An internal inquiry is carried out in order to determine the reasons for, and to establish the circumstances of an official's failure to comply with the law or with orders, which prejudiced the SSU's performance of its functions or which resulted in other grave consequences, such as a breach of public order or of the rights and legal interests of persons. Breaches of the procedure for the use of firearms or special means, and for the use of force, constitute other grounds for conducting an internal inquiry.

201. An internal inquiry is required to be completed within one month from the day it is ordered. Under certain circumstances, this time-limit may be extended by one month.

202. Upon completing an internal inquiry, the person responsible for its conduct issues a report. If in the course of an internal inquiry any elements of a criminal or administrative offence are discovered, the reporting official advises the person who ordered the inquiry to submit the report, with related materials, to the relevant law enforcement authority for further action.

IV. STRUCTURE AND CURRENT STATUS OF THE INVESTIGATIONS

A. Preliminary remarks

203. Pending the establishment of the State Bureau of Investigations[94], the transitional provisions of the CPC provide that the public prosecution service has investigative jurisdiction in cases where the suspects are law enforcement officers. Since the majority of the crimes during the Maidan demonstrations concerned allegations against officers, officials and agents of the MoI and the SSU, the PGO became the primary pre-trial investigative body for Maidan-related crimes.

204. Certain pre-trial investigations have been retained by the MoI, notably, those concerning the deaths and injuries of law enforcement officers. The SSU submitted that the related criminal proceedings conducted by it concerned the territorial integrity of Ukraine[95] and were not directly related to the Maidan events. The PGO supervises the investigations conducted by the MoI and the SSU.

205. The MoI and the SSU also contribute to the PGO investigations in two ways. Each is required to conduct an internal inquiry into possible disciplinary offences when a law enforcement officer is killed or injured or uses weapons, special means or force[96]. In practice, if it is considered that a crime may have been committed, the internal report is transferred to the public prosecution service for legal assessment and eventual prosecution. The MoI and the SSU also provide operational support to the PGO by carrying out investigative acts under PGO instruction and by providing added security support[97]. The fullest co-operation and coordination between the PGO, the MoI and the SSU is therefore of central importance for the Maidan investigations.

[94] As regards the structural and operational reasons, cited by various CoE and other international organisations, in favour of the establishment of a body, independent of the MoI and the PGO, to investigate alleged crimes by law enforcement officers and other officials, see paragraph 411 below and IAP Information Note No. 3.
[95] In accordance with Article 216 of the CPC.
[96] See paragraphs 190-193, 199-202 above.
[97] See paragraphs 184, 195-196 above.

206. The description of the investigations below is mainly based on submissions to the Panel by the investigating bodies. It is detailed because there exists no other publicly available outline of the Maidan investigations, which would have been necessary to facilitate a sufficient element of public scrutiny of the Maidan investigations[98]. The Panel would also underline that its description of the facts emerging from the pre-trial investigations should not be interpreted as prejudging any facts that may be found at trial or the liability of any suspect.

207. As noted in the introduction, the investigating bodies were requested to provide information as to the structure and outcome of the investigations as at 30 November 2014. While the outline of investigations below does not take account of the transfer of certain investigations to the SID of the PGO which was created in December 2014, the Panel has, nevertheless, recorded developments in the investigations from information in the public domain up to 23 February 2015.

B. Investigations conducted by the public prosecution service

208. The PGO is conducting one main investigation (Casefile 228[99]) as well as three additional investigations concerning the involvement of titushky, the ill-treatment of Mr Havryliuk and the abusive prosecution of protesters.

209. The Office of the Kyiv City Prosecutor is conducting other investigations ("EuroMaidan proceedings") which concern, in particular, the violent incidents of 1 December 2013 and the treatment of AutoMaidan activists and journalists.

1. The PGO Casefile 228

210. Casefile 228 covers the main violent incidents of the Maidan demonstrations:
(a) the violent dispersal of the protesters in the early morning of 30 November 2013;
(b) the resolutions for, procurement and use of special means against protesters;
(c) the 77 deaths of protesters in January and February 2014 and 183 firearms injuries from 18-20 February 2014; and
(d) the less serious injuries of protesters from 18-20 February.

211. On 23 February 2014 the MID of the GPO accepted for pre-trial investigation, and consolidated under casefile 228, hundreds of individual casefiles which had already been opened by the MoI as regards numerous killings and injuries of protesters during the Maidan demonstrations.

212. On the same day, PGO investigators examined crime scenes including those on Instytutska and Hrushevskoho Streets, Kriposny Lane, Maidan Nezalezhnosti Square and at the Ukraina Hotel, the National Bank of Ukraine and the Zhovtnevyi Palace. A large number of objects were found and subjected to expert examination. The PGO maintained its surveillance of the barricades and, when the last barricade was dismantled in mid-2014, GPO investigators recovered further items of evidence.

213. In its submissions to the Panel of December 2014, the PGO confirmed the following investigative acts within casefile 228. The PGO interrogated over 2,000 witnesses and carried out over 400 inspections of crime scenes, clothes and belongings and the viewing of hundreds of hours of recordings available on the Internet. In addition, crime scene investigations were held with 87 witnesses and 61 victims. The PGO obtained 400 court orders to access telephone records and checked the telephone traffic of 1,140 law enforcement officers, high-ranking officials, victims and others. In addition, it undertook a number of covert

[98] See paragraph 495 below.
[99] Casefile No. 12014100060000228.

investigations and conducted over 100 searches. Over 1,000 forensic examinations were ordered[100]. In addition, four inspections and inventories were carried out to check weapons and ammunition within the law enforcement agencies.

214. The matters falling within the scope of casefile 228 have changed as the investigation has evolved and as certain matters have been added to or separated from the casefile.

(a) Dispersal of the demonstrations in the early morning of 30 November 2013

215. The PGO investigation indicates that the Secretary of the National Security and Defence Council (Mr Kliuiev) unlawfully decided to disperse the Maidan protesters and, to this end, he engaged the Deputy Secretary of the National Security and Defence Council (Mr Sivkovych), the Chair of Kyiv City State Administration (Mr Popov) and the Chair of the Chief Directorate of the MoI in Kyiv (Mr Koriak).

216. Three related investigations are pending.

(i) The original proceedings against high-ranking organisers of the operation (abuse of power)

217. On 30 November 2013 an investigation casefile[101] was opened concerning an abuse of authority by law enforcement officers in the performance of their duties on 30 November 2014. On 14 December 2013 Messrs Popov, Sivkovych, Koriak and Fedchuk (the last being the Deputy Head/Head of the MoI Public Safety Department) were notified of suspicion, followed in January 2014 by Mr Marynenko (Head of the MoI Department of Public Safety). On 20 December 2013 and 8 January 2014 the PGO issued press releases confirming that 200 persons had been interviewed and 57 forensic examinations ordered.

218. On 31 January 2014 the PGO filed a motion with the Pecherskyi District Court, pursuant to the Amnesty Law of 19 December 2013[102], to exempt all five accused from criminal liability. The court granted the motion on the same day and further found that Mr Sivkovych had had no involvement in crimes on 30 November 2013. The appeal court, by rulings of 13 March, 2 April and 6 May 2014, set aside the first instance decision, holding that there had been an incorrect application of the Amnesty Law, and remitted the cases for a new trial before the Pecherskyi District Court.

219. On 29 July 2014, the Pecherskyi District Court therefore rejected the PGO motion as regards Messrs Popov and Sivkovych and returned the casefile for pre-trial investigation. It does not appear that the Pecherskyi District Court has yet definitively responded to the same motions as regards Messrs Marynenko, Koriak and Fedchuk, since there have been numerous defence motions to disqualify judges[103] and to change the court composition. Mr Sivkovych himself filed a further motion to Pecherskyi District Court under the Amnesty Law of 19 December 2013 for his exemption from criminal responsibility: that application appears to be pending.

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[100] These included 386 forensic medical examinations to determine the cause of death and bodily injuries as well as 375 forensic ballistic examinations, 69 cytological examinations, 11 immunological examinations, 25 complex medical and forensic examinations, 111 complex chemical ballistic trace examinations, three commission-based forensic and ballistic examinations of sniper rifles, three DNA tests, eight facial profiles, 15 bomb and fire examinations (as regards the fires in the Trade Union Building and in the offices of the Party of Regions), 44 technical examinations (concerning explosives) and four examinations of cold steel guns.

[101] Casefile no. 42013110000001053.

[102] For a detailed descripton of the various amnesty laws adopted December 2013-February 2014, see IAP Information Note No. 10.

[103] Nine judges were challenged in December 2014 alone.

(ii) The second proceedings against high-ranking organisers of the operation (interference with demonstrations)

220. On 24 February 2014 the new Prosecutor General, Mr Makhnitskyi, opened a further investigation against four of the above five accused (Messrs Popov, Koriak, Fedchuk and Marynenko) on different charges of illegal interference with the organisation of demonstrations, charges falling outside the Amnesty Law. A notice of suspicion was also served on Mr Kliuiev as regards similar offence.

221. On 17 July 2014 these new criminal proceedings were separated from the casefile[104] and suspended pending a search for the suspects. On 11 September 2014 the appeal court upheld the appeal of a victim and reversed the decision to suspend. On 3 October 2014 investigation casefiles nos. 1053 and no. 630 were merged. On 7 October 2014 the criminal proceedings concerning Messrs Koriak, Fedchuk and Kliuiev were separated into another casefile[105] and suspended since the three suspects were missing. No progress was reported by the PGO in December 2014 in relation to the investigation against Mr Marynenko, who was released on a personal undertaking.

222. As regards the charges against Mr Popov in both proceedings, the pre-trial investigation has ended, his study of the casefile has concluded and in February 2015 the case was sent for trial.

(iii) Proceedings concerning the actions of Berkut officers

223. In November 2014 the PGO outlined to the Panel, for the first time, the content and status of the casefile concerning the involvement of the Berkut officers in the events of 30 November 2013. All 390 Berkut officers, who could potentially have been involved, had been identified and questioned[106]. Various analyses led the PGO to believe that approximately 30 officers had ill-treated protesters and that 96 protesters had received injuries. No officer had admitted ill-treating any protester or seeing any officer doing so. None of the victims recognised any law enforcement officer. The PGO confirmed that it had not yet identified any of the 30 or so Berkut officers possibly involved and it was hoped that expert examinations would assist.

224. The PGO representatives criticised the results of the relevant MoI internal inquiry[107]. The report recorded that senior officers had instructed law enforcement officers to remove the protesters in order to install the New Year tree in compliance with the Police Act. No information was given about particular persons and all that could be drawn from the report was that each Berkut officer had himself evaluated the risk and the need for the use force. The PGO representatives concluded from this that the MoI did not want to investigate this episode and remarked that all 390 Berkut officers continued to carry out law enforcement duties.

225. Media reports indicated that, on 27 January 2015, the PGO issued notices of suspicion to four former Berkut commanders for abusing their powers by obstructing demonstrations. The Pecherskyi District Court released all four officers to home arrest. On 30 January 2015 that court suspended those officers from duty in the special unit to which they had been assigned.

[104] New Casefile no. 42014000000000630.
[105] Casefile no. 42014000000001025.
[106] Approximately 100 officers were from regions outside Kyiv.
[107] It appears that it was sent to the PGO on 30 January 2014. The MoI did not furnish this report to the Panel.

(b) Resolutions of 22 January 2014 on the use of special means against protesters

226. The PGO investigations into matters concerning the use of special means against protesters have led the PGO to issue a series of notifications of suspicion. All suspects, save Mr Lekar, have absconded.

227. On 27 May 2014 Mr Azarov, the former Prime Minister, was notified of suspicion concerning the alleged illegal adoption by the Cabinet of Ministers of the relevant resolutions on 22 January 2014[108], resulting in grave consequences.

228. On 12 June 2014 Mr Lekar (a former Deputy Minister of the Interior) and Mr Zinov (the former Head of the MoI Department of Material Support) were notified of suspicion of crimes concerning the alleged illegal supply of special means from the Russian Federation which were used by law enforcement officers to suppress the protests, resulting in grave consequences[109]. On 2 July 2014 Mr Lekar was apprehended. On 3 July the Pecherskyi District Court released him to home arrest. The PGO informed the Panel in November 2014 that the pre-trial investigation had been completed and that Mr Lekar was studying the casefile.

229. Notices of suspicion were also issued against Mr Zakharchenko, on the Deputy Minister of the Interior (Mr Ratushniak) and on Messrs Lekar and Zinov for embezzling public funds to purchase an illegal supply of special means made in the Russian Federation and later used against the Maidan protesters. On 14 August 2014 these proceedings were separated from casefile 228 and included in casefile 835[110]. From casefile 835, a further casefile 1256[111] concerning Mr Lekar was drawn on 17 November 2014. The pre-trial investigation in casefile 1256 was finalised on 18 November 2014 and Mr Lekar was given access to the pre-trial investigation materials which were being studied as at December 2014.

230. The Panel has not been informed of any notices of suspicion served on law enforcement officers as regards their use of special means. Representatives of the MoI confirmed to the Panel in September 2014 that an MoI internal inquiry had found that law enforcement officers had failed, as required by law, to document their orders to use, or their use of, special means against protesters.

(c) Deaths and injuries of protesters by gunfire

(i) Content of this investigation

231. This has been the priority investigation for the PGO. It concerns 77 deaths (67 by firearms) between 22 January and 20 February 2014[112], as well as the wounding by firearms of 183 persons between 19 January and 20 February[113]. The vast majority of these deaths and injuries took place between 18 and 20 February: on 20 February 2014 alone there were 49 fatal shootings and 93 firearms injuries on or near Instytutska Street.

232. A number of theories were examined by the PGO. The planned deployment and actions of the MoI and SSU officials and officers, with a view to ending the Maidan demonstrations, became one of the important aspects of the PGO investigations. These counter-Maidan operations were referred to as "Boomerang" (the SSU operation) and as "Surge" or "Wave" (the MoI operation).

[108] As regards domestic law on the use of special means and firearms in a public order context, see IAP Information Note No. 13.
[109] It appears that Mr Zinov was also specifically notified of suspicion of supplying special means to titushky.
[110] Casefile No. 4201400000000835.
[111] Casefile No. 42014000000001256.
[112] See Annex VIII, The Maidan-related deaths investigated under casefile no. 228.
[113] See Annex IX, The Maidan-related injuries investigated under casefile no. 228.

(ii) Operational plans and deployment information from the SSU and the MoI

233. On several occasions, the PGO complained to the Panel and in public statements of a lack of co-operation by officials of the MoI, and to a lesser extent by those of the SSU, in furnishing and/or reconstituting operational and deployment plans, information and records.

234. Without such co-operation[114], the PGO representatives submitted, the PGO had been obliged to re-construct, through its own investigations, the basic operational facts relevant to law enforcement involvement in the anti-Maidan operations. This included the numbers of officers, their place of deployment, their roles and assignments and their weapons, including facts relating to the return of firearms and to those firearms that were missing. The PGO described this ongoing exercise as a significant challenge, given the level of deployment (a total of approximately 11,000 MoI and SSU officers) and the variety of forces involved[115]. According to the PGO, this lack of co-operation had protracted its work and undermined its ability to establish basic facts.

235. The PGO underlined, in particular, that it had received no operational plans for the public order operations during the Maidan period. The MoI had consistently confirmed to the Panel that no such plans had been created, a position repeated by the MoI internal inquiry report dated 24 April 2014[116]. As to deployment records, the PGO accepted that it had obtained certain deployment documents up to 21 January 2014 as well as some general information about the deployment of various units at certain times and near certain areas, but it had no specific records of the deployment of units or officers to a particular place or for a particular task[117]. The MoI's position was that whilst certain deployment records had been created, notably for the early morning of 30 November 2013, an internal inquiry had established that those records had disappeared: in particular, daily official deployment documents had been submitted to Mr Fedchuk who had since absconded and those documents could not be found. Since MoI law enforcement officers had been brought in from the regions, deployed as necessary and given instructions daily, and sometimes several times a day, reconstructing this information was a complex and continuing exercise for the PGO.

236. As to the SSU, the PGO similarly underlined that it had not been furnished with any SSU operational plans or deployment records. The SSU had informed the PGO that it retained no documents regarding the planning, organisation or conduct by the SSU of its counter-Maidan operation: that documentation had either been taken by former SSU officials or destroyed. The Chief of the SSU emphasised this during the joint press conference of 3 April 2014 and before the Panel in November 2014, where he confirmed that nothing, including staff files, had been left behind. While the PGO accepted that certain documents might not have been created, since the SSU counter-Maidan operation had been conducted entirely unlawfully, it considered that senior officials of the SSU had not provided effective

[114] See paragraph 205 above which describes the importance of MoI and SBU co-operation.

[115] See paragraph 88 above. The MoI forces deployed included: Berkut officers; Internal Troops as well as special sub-divisions of the Internal Troops (Bars, Jaguar, Leopard, Tygr) and a special anti-terrorist unit called Omega; and special police units including the Sokil Unit of the Department for Fighting Organised Crime. The SSU Alpha unit was also deployed as was the State Guard, the latter force being subordinate to the President and controlled by the Verkhovna Rada.

[116] This Report was sent to the PGO on 24 May 2014. Certain senior MoI officials were found to have committed a number of serious violations of internal regulations: seven officers were held disciplinarily liable but they had already been dismissed; two were warned of professional impropriety and five were given a severe reprimand.

[117] The Preliminary Observations of the CPT on its visit to Ukraine in September 2014 reported that the actual deployment of officers often differed, in any event, from any initial plans.

assistance by recovering[118] or reconstituting these documents or by disclosing the circumstances of the SSU anti-Maidan operation.

(iii) Investigating the SSU counter-Maidan operation ("Boomerang")

237. The current SSU Chief confirmed to the Panel that the essential purpose of the SSU counter-Maidan operation was to assist the former government to hold onto power "by any means".

238. The investigation suggested that the SSU counter-Maidan operation was launched on 18 February with the first main phase being the assault on the Trade Union Building in order to clear protesters from it. A cordon was secured around the building by Internal Troops; seven-man SSU sniper teams, armed with sniper weapons, were deployed on the roofs of buildings near the Trade Union Building; and over 200 Alpha troops armed with, *inter alia*, Kalashnikovs (5.45 mm calibre) and sniper weapons were deployed onto the roof of the building and moved down through the floors; the assault ended when a fire broke out; the two persons whose bodies were found later in the building had not been shot. The PGO confirmed to the Panel that 13 persons had died of firearm and other injuries during the night of the assault on the Trade Union Building[119]. The PGO described to the Panel the advance preparation by the SSU, which had begun as early as January 2014, and named those who had signed the orders and implemented them on 18 February 2014. As at November 2014, the PGO had not established the cause of the fire and forensic results were still awaited.

239. The second phase of the SSU counter-Maidan operation concerned the deployment of seven-man sniper teams on the roof of the Cabinet of Ministers on 20 February 2014.

240. The PGO informed the Panel that it had been able to identify and question most of the SSU special Alpha unit officials and snipers involved in these operations as they were still in Ukraine. All had stated that they had not fired their weapons, except warning shots in the Trade Union Building, that they had not seen any other person use their weapons and that they had all returned their weapons and ammunition. The PGO found no trace of Alpha weapons having been fired, no cartridges and no bullets *in situ*. The radio communications between Alpha officers had yielded no evidence of shooting by the Alpha forces. The State Guard, whose role it was to protect government buildings, including the Cabinet of Ministers, had not reported to the PGO that Alpha snipers had fired their weapons.

241. The PGO criticised the two internal inquiries conducted by the SSU. The Panel's requests for copies of the reports of the inquiries were refused on the grounds that the reports were classified as secret. However, the Panel were told that the first had been limited to the Trade Union Building operation and failed, therefore, to cover the broader context of the counter-Maidan operation. While the second inquiry concerned high-ranking SSU officials, it had found only that Mr Yakymenko had deserted and made no findings about his role in the planning and implementation of the counter-Maidan operation and drew no conclusion about SSU activity during the Maidan period. The Panel was not informed that the PGO had followed up with the SSU the deficiencies found in the internal inquiry reports.

242. All the PGO representatives interviewed by the Panel accepted, as did the current SSU Chief, that it could not be excluded that SSU Alpha officers were responsible for the killings and injuries of protesters by firearms during the operation and even that this might

[118] The Chief of the SSU confirmed in the press conference of 3 April 2014 that the SSU had recovered documents in a recent secret mission to Simferopol and that they had established the plans, orders and actors involved in the SSU counter-Maidan operation, which information had been sent to the PGO. The PGO complained that the SSU had not brought back records which would have assisted the Maidan investigations.

[119] See Annex VIII, List of persons killed and investigated under casefile no. 228.

have been the direct result of the unlawful orders of SSU officials. However, the PGO informed the Panel that it had found no material evidence of this so far.

(iv) Investigating the counter-Maidan operation of the MoI ("Wave")

The Berkut Special Force

243. The PGO informed the Panel that the investigation casefile contained no evidence of Berkut involvement in the shootings on Hrushevskoho Street on 22 January 2014, in Mariinskyi Park on 18 February or during the night of 18/19 February 2014.

244. However, the PGO confirmed to the Panel that, on the basis of the material in the casefile, the majority of fatal shootings of protesters on 20 February 2014 could be attributed to Berkut officers. That assessment was based on the following factors.

245. It emerged from the investigation that on 20 February 2014 a Berkut unit was deployed to Instytutska Street. The unit comprised about 90 officers. An analysis of hundreds of hours of recorded footage and Internet material allowed the identification of 21-24 individual Berkut officers, firing as they moved up Instytutska Street and from behind the concrete barrier near Khreshchatyk Metro station on Instytutska Street. They were masked, wore helmets, black uniforms and yellow armbands, to allow the members of the unit to identify each other, but otherwise had no markings on their uniforms to allow for the identification of individual officers. The PGO representatives indicated that none of those officers could have used their weapons without the order of their unit commander, Mr Sadovnyk.

246. The various expert analyses indicated that the majority of the 49 fatal shots on 20 February 2014 on Instytutska Street were fired using Kalashnikov (AKS-47) 7.62x39 mm weapons.

247. The investigation linked Berkut officers to weapons of that calibre. The PGO had some difficulty in establishing the actual weapons issued to the Berkut officers. However, the investigation indicated that the only issue and return records relating to firearms that were missing were those of the Berkut special units in respect of their operations from 20-23 February 2014, the suspicion being that those records had been destroyed on the orders of a commanding officer. Those investigations further indicated that a Berkut unit, commanded by Mr Sadovnyk, had been supplied with approximately 20 AKS rifles of 7.62x39 mm calibre, that those rifles had not been returned to the approved storage facility and that they had since dissappeared[120]. These allegations were consistent with the findings in the MoI inquiry report of 24 April 2014.

248. The investigation had also shown, as a result of an analysis of the trajectory of the bullets, that more than 30 persons had been shot from behind the concrete barricade near Khreshchatyk Metro station on Instytutska Street, which corresponded to the extensive recordings available on the Internet of Berkut officers in black uniforms and yellow arms bands shooting from that position.

The other MoI units and the State Guard

249. Submissions were made to the Panel as regards the deployment and arming of the other MoI law enforcement units, including the Internal Troops, the Omega unit of the Internal Troops, the Sokil police commando unit and the various sniper units attached thereto, which had been deployed on public order duties during 18-20 February 2014.

[120] The PGO is investigating several theories as to the current location of those missing weapons, the version most often advanced being that the weapons had been removed to Crimea. The search for the weapons is continuing.

250. Most of those forces had been armed, according to the PGO, with AKS 5.45 mm calibre weapons. The small sniper units of 7-10 persons within those forces which had been deployed on counter-sniper activities, had been armed with standard weapons for such units, including Dragunov and TRG (Belgian) rifles.

251. The PGO representatives confirmed to the Panel that, apart from the missing Berkut firearms, all the remaining MoI weapons had been returned. So far, the investigations had provided no objective evidence that firearm deaths or injuries had been caused by AKS 5.45 mm calibre weapons. It had, however, been established that Omega Special Forces of the Internal Troops had also been armed with 7.62 mm calibre weapons: the weapons were not missing, had been seized and the results of forensic tests were still awaited. However, the available photographic and other evidence demonstrated to the PGO that the Omega troops had been behind the Berkut troops on Instytutska Street on 20 February 2014, as they had arrived after the Berkut officers.

252. Finally, snipers of the State Guard[121] had been deployed on the roof of the Presidential Administration on 18-20 February. The PGO noted that this force had provided full weapons documentation, all internal inquiry reports and all witness interviews. The State Guard officers stated that they had not witnessed any shootings by their own or by any other units.

(v) Questions remaining open

Evidence of injuries or killings by sniper fire

253. As noted above, the investigation indicates that several law enforcement forces, with small units armed with sniper weapons, were deployed between 18 and 20 February along the perimeter of Maidan and in the adjacent streets as well as in, and on the roofs, of nearby buildings. The shootings, particularly those on 20 February 2014, had come to be associated with sniper fire. Indeed, as recently as 19 and 20 February 2015 both President Poroshenko and the Chief of the SSU had spoken publicly about the evidence of sniper fire against protesters and law enforcement officers on Maidan and, notably, on 20 February 2014.

254. However, the PGO representatives explained in its written and oral submissions to the Panel that, while certain elements could point in that direction, there was no clear and confirmed material evidence of any killing or injury by sniper fire.

255. According to the PGO, the elements pointing to sniper fire included the fact that many gunshot wounds were perforating wounds to the head and upper trunk. There had reportedly been flashes from the windows of the Ukraina Hotel: the PGO had reviewed the photographic material and questioned hotel staff and witnesses. The PGO was also of the view that the evidence suggested that at least three of the 49 persons shot in Instytutska Street on 20 February 2014 had been shot from the Hotel Ukraina or from the Conservatory building and there would also appear to be some unconfirmed evidence of ten persons having been shot from rooftops.

256. However, none of the bullets found at the crime scenes or extracted from the bodies of the victims pointed to the person as having been killed or injured by sniper fire. Surveillance footage from the National Bank of Ukraine, facing onto Instytutska Street, contained images of shootings from sniper rifles, but it was difficult to identify which member of which unit was firing and with what result.

257. In addition, the PGO explained an evidential difficulty linked to the calibre and power of the weapons involved. The AKS 7.62 mm calibre weapons, which had been used

[121] The State Guard is not an MoI force, see Annex VII Relevant law enforcement formations in Ukraine.

mainly by the Berkut officers on 20 February and considered to be responsible for many deaths, were the same calibre as the commonly employed Dragunov sniper rifle. The sniper rifle was more powerful and the bullets were longer so they penetrated easily and did not generally lodge in the body. A penetrating gunshot wound was thus often a useful distinguishing feature of a sniper rifle. However, an AKS 7.62 mm was also a powerful weapon, lethal up to 1 km, so that if used at 200-300 metres, as on Instytutska Street, its bullets could also pass through the body. Without the bullet, it was not therefore possible to distinguish between a penetrating wound from an AKS or a sniper rifle of the same calibre. In addition, an AKS rifle could fire single shots, as well as rounds of ammunition: the poor sound quality on the footage recordings available to the PGO meant that it was not possible to use sound to distinguish between different rifle shots.

The "third force theory"

258. According to the PGO, it was also examining the possibility that a "third force", that is a person or body other than the protesters and the Ukrainian authorities, was responsible for certain killings and injuries on 20 February 2014. The recent public statements by President Poroshenko and the Chief of the SSU[122] suggested that there was evidence of Russian involvement in sniper fire on Maidan.

259. A number of factors had prompted those enquiries. Persons had been shot in locations where the PGO had not been able to find any evidence of the deployment of law enforcement officers, including the Ukraina Hotel, from which three persons appeared to have been shot. Persons had also been shot after the conflict had ended on 20 February 2014. The Maidan leaders had strictly forbidden the use of arms among the protesters themselves and it was still not known who had been shooting at the law enforcement officers. The PGO was therefore investigating a number of theories as to the identity of the third force, including the possible involvement of pro-Russian groups or forces of the Russian Federation. In this latter respect, the Chief of the SSU confirmed to the Panel his shock at the level of FSB infiltration of the SSU during the Maidan demonstrations, although the PGO submitted that the failure of the SSU to provide the PGO with any information about that infiltration had rendered it impossible for the PGO to establish evidence of FSB presence or involvement in the shooting. The PGO confirmed to the Panel that there was no confirmed evidence, as at November 2014, of third force involvement and no firm view as to the identity or intention of any such force.

260. The MoI also raised the possibility, without developing it, that a "third force" had been responsible for inflicting injuries on law enforcement officers with a view to provoking tension between the police and the protesters. In its submissions to the Panel, the SSU did not expand on the question of shootings by a third force.

Remarks of the Panel as regards these open questions

261. The Panel reiterates that it is not its role to carry out its own investigation into the Maidan events or to substitute its own view for that of the national authorities. The authorities concluded that, while there were elements in the case to support such theories, there was as yet insufficient evidence on which to find that deaths or injuries had been caused by sniper weapons or that a "third force' had been involved in those deaths and injuries. While the Panel has not found anything to suggest that in reaching these conclusions the authorities overlooked any obvious line of inquiry, it is unable to express a view on the reasonableness of the conclusions currently reached.

[122] Public statements on 19 and 20 February 2015

(vi) The consequent summoning of Berkut officers in early April 2014

262. The picture emerging from the investigations was thus that most of the 49 fatal shootings in Instytutska Street on 20 February 2014 had been inflicted by AKS rifles of 7.62 mm calibre, that Berkut units had been deployed on Instytutska Street on 20 February 2014 armed with such weapons and that those weapons and related documentation were missing. The PGO investigations had, by early April 2014, identified a Berkut special unit deployed to Instytutska Street and 16 Berkut officers of that unit as possibly involved in the shootings and had begun to arrange to question and, if necessary, detain those officers.

263. The Panel has considered it important to set out in some detail below the evidence submitted to it by the then Deputy Prosecutor General in charge of the Maidan investigations, Mr Bahanets, concerning the PGO's attempts to pursue its enquiries with those former Berkut officers.

The arrest of three Berkut officers in April 2014

264. On 1 April 2014 Mr Bahanets held a meeting with the Minister of the Interior, a Deputy Minister of the Interior and the Chief of the SSU (Mr Nalyvaichenko). They agreed that 16 Berkut officers would be simultaneously called for questioning, on the pretext of a discussion on staffing issues, and that the MoI would ensure their attendance. A floor was cleared, 16 offices were emptied and made ready. Polygraph equipment, with an expert, was set up in each office. The idea was that each officer would take a polygraph test and, if suspicion of involvement in the shootings remained, the officer would be detained. Alpha troops were requested to guard the entrances to prevent the Berkut officers from leaving the building.

265. No Berkut officer attended in response to the call.

266. On 2 April a Berkut commander came to the office to request the PGO not to pursue his subordinates. It was agreed that three or four Berkut officers would be questioned and four Berkut officers subsequently attended during the night of 2/3 April 2014. Their questioning had just begun when a Berkut commander appeared (the same commander, it appears, as on 2 April) and told his subordinates not to answer questions, promising to get them out.

267. The PGO, nevertheless, detained a Berkut unit commander (Mr Sadovnyk) and two Berkut officers (Messrs Zinchenko and Abroskyn). While the questioning of these officers had not yielded any useful evidence, there were certain identifying features (the officers' masks had slipped or, in the case of Mr Sadovnyk, he held his weapon in a particular manner as he has an artificial arm) which allowed the PGO to conclude that these Berkut officers had discharged their weapons in Instytutska Street on 20 February 2014 and which, therefore, justified their arrest.

268. Mr Bahanets went on to recount that, on the same night, armed Berkut officers had surrounded the building where the three Berkut officers were being held, demanded their release and threatened to take over the building. PGO staff, in particular, the then Head of the MID of the PGO, Mr Shcherbyna, came to negotiate, the building was unblocked and the three Berkut officers were escorted from the building by the PGO.

269. A fourth Berkut officer agreed with the PGO to answer questions truthfully to avoid pre-trial detention. Mr Bahanets recounted an incident concerning this Berkut officer which he considered demonstrated that the MoI was obstructing the PGO. When that Berkut officer was about to be questioned, he received a call on his mobile telephone from the Kyiv Berkut office who said they would provide him with a lawyer and that he should not co-operate. The Berkut officer responded that he was ready to tell the truth. The PGO recorded this conversation. The PGO later obtained, by court order, the records of that Berkut officer's

mobile telephone. The telephone conversation, which the PGO representatives had witnessed and recorded, was missing from those records.

270. Mr Nalyvaychenko stated to the Panel in November 2014[123] that SSU officers had detained the 16 Berkut officers in or around March or May 2014 and that the PGO had released all but three. However, Mr Bahanets disputed this and re-affirmed to the Panel the account given above. It cannot be excluded that Mr Nalyvaichenko was referring to the fact that SSU Alpha forces had been requested to guard the floor of the building to which the Berkut officers had unsuccessfully been summoned.

The pre-trial detention of the three Berkut officers

271. The three Berkut officers were notified of suspicion of, *inter alia*, exceeding powers and the murder of a total of 39 protesters on Instytutska Street on 20 February 2014. They were also charged with unlawfully acquiring firearms, including 22 AKS rifles of 7.62 mm calibre, by prior conspiracy on 21 February, which weapons were still missing[124].

272. On 5 April 2014 the Pecherskyi District Court ordered the detention of Messrs Zinchenko and Abroskyn and the house arrest of Mr Sadovnyk. Following an appeal, on 22 April 2014 the detention of Mr Sadovnyk was ordered. Messrs Makhnitskyi and Bahanets underlined to the Panel that, pending that appeal, the PGO had taken all necessary measures to prevent his absconding, including ensuring the supervision of Mr Sadovnyk by law enforcement officers during his house arrest.

273. On 24 July 2014 the preliminary investigations were completed. On 1 August 2014 the casefile concerning these three Berkut officers and the death of 39 protesters was separated from the main investigation casefile no. 228[125] and, on 10 September 2014, the casefile was opened to the victims and the suspects for their examination. On 2 August 2014, an investigation casefile, concerning abuse of power and office by other unidentified law enforcement officers in relation to the 39 murders of protesters, was separated from the main casefile no. 228.

274. Since the pre-trial detention of the three officers was due to expire in September 2014, the PGO requested an extension of their detention. On 18 September 2014 the Pecherskyi District Court agreed to extend the pre-trial detention of Messrs Zinchenko and Abroskin. However, on 19 September 2014 Judge Volkova of the Pecherskyi District Court refused the PGO's request for an extension of the pre-trial detention of Mr Sadovnyk, finding that, whilst there was evidence to support the suspicion against him of a crime, the PGO had not substantiated the risk of his absconding. Although, under the prior court order, Mr Sadovnyk's pre-trial detention did not expire until 27 September 2014, Judge Volkova ordered his immediate release to house arrest. The PGO, whose representatives described to the Panel their shock at this order, lodged an appeal on the same day.

275. Under the terms of the order, Mr Sadovnyk was required to be at home between 11 p.m. and 7 a.m. He was fitted with an electronic bracelet. The radius of the signal of the bracelet was 50 metres and the transmitter in Mr Sadovnyk's home relayed a signal to the MoI monitoring authorities. He had a mobile tracking device to carry with him when he left the house during the day. A signal would alert the monitoring authorities if Mr Sadovnyk's bracelet was not in contact with the house transmitter at night or with the mobile tracking unit during the day.

[123] And before the Joint Parliamentary Committees meeting on 10 December 2014.
[124] A separate investigation (casefile no. 42014100000000201) was instituted on 5 March 2014 about unidentified Berkut officers taking possession of firearms and ammunition contrary to Article 262(2) of the CC.
[125] Becoming casefile no. 42014000000000760.

276. In the MoI internal inquiry report, dated 4 October 2014, it was found that at 7.52 a.m. on 3 October, the supervising MoI officer recorded a break in the connection between the bracelet and the mobile tracker. The supervising MoI officer made phone calls to the suspect's tracker device (no answer), to the suspect's wife (who said he was in hospital), to the suspect's legal counsel (who had no information) and to the local police, telling them to check, at the suspect's residence, whether he had left his tracker at home. At 11 p.m. on that evening the supervising police officer attended at the suspect's house[126]. The applicant and his bracelet were missing but the mobile tracker and transmitter were there. The suspect's wife said that Mr Sadovnyk had left the house after 7 a.m. and had not returned. Mr Sadovnyk has been missing since then.

277. On 4 October 2014 Judge Volkova issued a warrant for Mr Sadovnyk's arrest. On the same day he was put on a wanted list, information was given to border guards and the search for him was entrusted to the SSU. On 6 October 2014 the Kyiv Appeal Court allowed the PGO's appeal, set aside the first instance ruling and extended Mr Sadovnyk's pre-trial detention[127].

278. The PGO then initiated criminal proceedings[128] against Judge Volkova as regards her decision of 19 September 2014. On 6 October Judge Volkova was notified of suspicion of deliberately making an unjust ruling. The pre-trial investigation is ongoing.

279. In the meantime, Messrs Zinchenko and Abroskyn completed their examination of the investigation casefile and the first preliminary hearing took place on 23 January 2015. Following recusal applications, Judge Vovk was appointed to sit in the trial. The first trial date was fixed for 16 February 2015. On 12 February 2015 the new Prosecutor General, Mr Shokin, sought the approval of the Verkhovna Rada for the arrest of three judges of the Pecherskyi District Court, including Judge Vovk. On the trial date of 16 February 2014 two judges recused themselves, including Judge Vovk. At the end of February 2015 an appeal court decided that the trial would take place in Sviatoshynskyi District Court.

Opinions expressed by the PGO representatives on Mr Sadovnyk's escape

280. While the PGO representatives were hesitant to offer a clear opinion as to those responsible for Mr Sadovnyk's escape, their submissions to the Panel pointed to the MoI.

281. The PGO representatives complained that the courts had been used by, in particular, Berkut officers with the blessing of their superiors, as platforms for intimidation, a phenomenon that did not seem to have been addressed by the courts in question[129]. They considered Judge Volkova's decision to have been entirely unfounded: she had not released the two junior Berkut officers the previous day; she had not placed any realistic limitations on Mr Sadovnyk's home arrest; and there had been no need to release Mr Sadovnyk that day since his detention was not due to expire for another week. The PGO representatives also considered that law enforcement officers had not carried out proper surveillance of Mr Sadovnyk's home arrest, Mr Makhnitskyi and Mr Bahanets both recalling the successful supervision of Mr Sadovnyk when he had been temporarily released to home arrest in April 2014.

[126] This MoI inquiry concluded that there had been no breach of the law or of regulations. A second inquiry (8 October 2014) simply found that the relevant formalities (forms and documents) had been completed so that there had been no breach of the law or of regulations.

[127] Since Mr Sadovnyk was missing, on 24 October 2014 his file was separated from the main investigation casefile no. 228 (creating casefile no. 42014000000001149).

[128] Casefile no. 4201400000000954.

[129] See paragraph 456 below.

282. Certain PGO representatives expressed the view that the persons behind Mr Sadovnyk's escape were the same as those who had given the orders to Mr Sadovnyk to shoot in the first place. They also pointed out that Mr Sadovnyk did not have the financial, organisational or other resources required to obtain such a court decision or to organise his escape.

(vii) The additional suspected Berkut officers

283. In early April 2014, the day after the detention of the three Berkut officers, a Deputy Minister of the Interior requested the PGO not to summon the other suspected Berkut officers for a week, it being agreed that the MoI would persuade the Berkut officers to attend at the PGO's offices. A week later, no one had appeared.

284. The PGO issued summonses but no Berkut officer responded. Several Berkut officers later informed the PGO that a high-ranking MoI official had told them that they had done nothing for which they could be criticised and that the official would do all that he could to get them out of the situation, suggesting that the measures against them had been politically motivated.

285. The PGO representatives gave conflicting reasons to the Panel as to why no additional Berkut officers had been notified of suspicion in relation to the killings on Instytutska Street on 20 February 2014.

286. On the one hand, in their written submissions to the Panel of July 2014, the PGO informed the Panel that they had identified 20 Berkut officers, including the three arrested officer, whom they considered suspects. Representatives of the PGO (including Mr Scherbyna) at the meetings with the Panel in September 2014 indicated that notices of suspicion as regards these additional officers had already been prepared and that pre-trial detention would shortly be requested. However, thereafter the PGO submissions to the Panel changed[130], the PGO maintaining that it did not have sufficient evidence to notify these additional Berkut officers of suspicion. The representatives of the PGO confirmed to the Panel in November 2014 that, according to information from the SSU, between 8 and 12 of the additional suspected Berkut officers were still in Ukraine.

287. On the other hand, Messrs Bahanets and Scherbyna, who had been leading the Maidan investigations until the end of August and early September[131], considered that there had been sufficient evidence to notify those additional Berkut officers of suspicion by the summer of 2014. They stated that they had informed the then Prosecutor General, Mr Yarema, of their wish to proceed against the additional Berkut officers and that, after they had made him aware of the intention to notify the officers of suspicion, the officers had absconded. Both prosecutors linked their removal from the Maidan investigations to their notification of an intention to charge the suspects. Mr Makhnitskyi made similar submissions to the Panel: he maintained that, before he was dismissed in June 2014, there had been sufficient evidence to notify a total of 16 Berkut officers of suspicion and he considered that high-ranking MoI officials had been controlling this aspect of the investigation.

288. Following Mr Yarema's resignation and the appointment of Mr Shokin as Prosecutor General, on 23 February 2014 it was announced that 20 Berkut officers had been notified of suspicion on the shootings on Instytutska Street on 20 February 2014: two Berkut officers had been arrested and 18 were missing.

[130] Oral and written submissions of the PGO to the Panel in October, November and December 2014.

[131] Mr Bahanets led the investigations until the end of August 2014 and in early September 2014 Mr Scherbyna, the subordinate of Mr Bahanets on the Maidan investigations, was served with a redundancy notice.

(d) Abuse of power by officials, leading to non-firearms injuries, on 18-20 February 2014

289. Initially, the PGO left it to the Kyiv City Prosecutor's Office to investigate non-firearms injuries on those dates and its casefile 0180[132] concerned the alleged abuse of power by MoI officials during the protests leading to the injury of over 450 citizens[133].

290. However, on 22 October 2014 this pre-trial investigation was re-transferred to the MID of the PGO and merged with the main casefile no. 228. Mr Horbatiuk[134] later explained to the Panel that this was because the City office had not carried out any investigations in this casefile.

2. The PGO investigation into the involvement of titushky[135]

(a) Scope of the investigations

291. This investigation concerns both the alleged engagement of titushky by senior MoI officials to counter the protests from November 2013 until February 2014, as well as the crimes allegedly committed by them against protesters. It covers therefore incidents such as the gathering on 18 February 2014 of 300 persons of athletic build at the crossroads of Volodymyrska and Velyka Zhytomyrska Streets for planned violent actions against protesters, including the connected murder of Mr Veremii and the injury of those accompanying him; the shootings on the night of 18/19 February at Mykhailivska Square; and other incidents of attempted murder and ill-treatment of persons, notably from 18 to 20 February 2014.

(b) Pre-trial investigation

292. According to the PGO investigation, it is suspected that hundreds of titushky had been involved in anti-Maidan activities from 30 November 2013 to 20 February 2014. They had been brought in by the former Minister of the Interior and had been organised, paid, given instructions and armed, to the extent that they carried arms, by the MoI. They had assaulted, kidnapped and killed protesters. It was suspected that Messrs Zubrytskyi and Chebotariov were key organisers of the titushky operations. The former head of the MID of the PGO, Mr Scherbyna, provided an illustration of what he considered to be the level of coordination with the MoI. He maintained that there had been a plan for the night of 18/19 February 2014 to remove the protesters from Maidan. Law enforcement groups were to push the protesters towards to the Mykhailivska Square, where they would be met by titushky. Whilst the main mass of titushky were not armed or had only bats, some had firearms, including automatic weapons. The plan was that the titushky would beat and shoot the retreating protesters. Mr Scherbyna explained that, for unknown reasons, this plan had not been activated; instead, there had been sporadic, and sometimes fatal, episodes that night, including the murder of Mr Veremii. The investigations are continuing.

(c) Separate investigation casefiles pursued

293. Further to the PGO investigations, certain separate titushky investigations have been pursued.

294. The first[136] concerns the alleged engagement and financing of titushky by the MoI and certain crimes committed by them against the protesters in January and February 2014.

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[132] Casefile no. 42014100000000180.
[133] See Annex IX, Persons injured and investigated under casefile no. 228.
[134] The Head of the newly established SID of the PGO (see paragraphs 173-174 above).
[135] See footnote 9 above and File no. No. 42014000000000401.

The PGO representatives explained to the Panel in November 2014 that, whilst the titushky could not have operated without the support of the MoI, there was, as yet, insufficient evidence about the involvement of particular MoI officials to allow any of those officials to be notified of suspicion.

295. However, Mr Bahanets appeared to disagree. He told the Panel that Mr Aliiev, who was suspected of being one of the organisers of the titutsky and of shooting Mr Veremii, had attended during the Maidan events at the MoI premises in his civilian car where he had been given truncheons and shields for distribution to the titushky and that only the Minister of the Interior could have ensured that this could place.

296. The Panel understands that no MoI official been notified of suspicion in this first investigation[137].

297. The second investigation[138] focuses on the murder of Mr Veremii and the attempted murder of many others. Seven titushky have been notified of suspicion (including Messrs Aliiev and Zubrytskyi). The PGO suspects Mr Aliiev of shooting Mr Veremii and three others of being directly involved[139]. These proceedings had been suspended, the suspects being on a wanted list.

298. A third investigation has led to the notification to Mr Krysin of suspicion of malicious hooliganism for the assault of Mr Veremii with a bat. In August 2014 the investigation was concluded and the case was transferred to court where it is pending. While Mr Krysin was initially in pre-trial detention and then under house arrest, in mid-October 2014 the Shevchenkivsky Court released him on a personal undertaking[140] and accepted the PGO's request to hold the session *in camera*.

299. On 29 January 2015 the PGO announced that investigations had commenced against certain transport companies for transporting titushky. Statements made at the joint press conference of the PGO and the MoI of 2 February 2015 appear to indicate that four additional titushky suspects have been arrested and others have been put on wanted lists. The Panel has not been provided with further details.

3. The PGO investigation into the ill-treatment of Mykhailo Havryliuk[141]

300. This investigation concerns the ill-treatment and detention of Mr Havryliuk, an active participant in the protests, by law enforcement officers on 22 January 2014. This incident has become an emblematic Maidan incident.

301. In late January 2014 the Holosiivskyi Department of the MoI initiated a criminal investigation into the incident, following a complaint by a member of the public. The Kyiv City Prosecutor also opened an investigation into abuse of power, *ex officio*, based on publicly available information.

302. On 4 March 2014, both cases were joined and taken over by the MID of the PGO (casefile 559). Separate investigation casefiles have been created from this casefile. In letters to the MoI[142], the PGO criticised as a "mere formality" the MoI's internal inquiry, which had

[136] Casefile no.1201410010002561.
[137] It appears that Mr Zinov was notified of suspicion, in another casefile, of supplying special means to titushky.
[138] Casefile no.42014000000000998.
[139] Those four, as well as four others, are suspected of organising titushky actions.
[140] The Heaven's Hundred NGO expressed outrage to the Panel about this release of Mr Krysin given the possibility of his intimidating witnesses.
[141] Casefile no. 12014100010000559: consolidated on 4 March 2014 from casefile no. 4201410000000092 (from Kyiv PO); no. 42014000000000338 (from the PGO); and no. 42014000000000339 (from the PGO).
[142] Letters from the PGO (Mr Bahanets) to the MoI dated 7 and 18 April 2014.

concluded on 14 February 2014, and complained about the MoI's failure to provide the PGO with any other information about this incident, despite the PGO's repeated formal requests to do so. The PGO maintained that progress had been achieved through its own investigations.

(a) Abuse of power by Internal Troops[143]

303. On 24 and 28 April 2014 two servicemen of the Internal Troops were notified of suspicion, Mr Kravets, for abuse of power and Mr Lomonos for abuse of power, accompanied with violence and degrading acts.

304. On 29 April 2014, Mr Kravets and the victim concluded a reconciliation agreement in which they also agreed on the punishment to be imposed.

305. On 14 May 2014 indictments were sent to Pecherskyi District Court and, on 26 May 2014, the trial took place. The court established that, at 12.30 p.m. on 22 January 2014, Mr Havryliuk had been apprehended in Khreshchatyk Street, by Messrs Lomonos and Kravets, both servicemen of Internal Troop unit 3028. The two officers were subsequently ordered by the commander of the unit, Mr Plakhotniuk, to take Mr Havryliuk to the detainee escort vehicle. Without notifying Mr Havryliuk of the reasons for his detention or of his rights, the servicemen set about implementing the order. At a certain point, Mr Lomonos used the wooden handle of the ice-pick, which had been confiscated from Mr Havryliuk, to hit him in the face and on the neck.

306. When Mr Havryliuk and the two servicemen reached the Berkut combat formation, Berkut officers started verbally abusing Mr Havryliuk. Although aware of the negative and aggressive reaction of the Berkut officers, the two servicemen nevertheless decided to continue to convey Mr Havryliuk through the combat formation of Berkut officers, who then surrounded Havryliuk, started beating him for about five minutes and stripped him naked to his socks. The temperature at the time was approximately -10°C. Neither of the servicemen took any action to prevent his being beaten or stripped or to help the victim to put his clothes back on. On the contrary, one of the serviceman threw his clothes further away from Mr Havryliuk and made him continue walking while still naked. When they reached the convoy car, the servicemen noticed that some Berkut officers were filming Mr Havryliuk and, instead of letting him get into the convoy car, the servicemen stopped him and ordered him to turn towards the cameras, including those of the Berkut officers themselves. Mr Lomonos, grabbed Mr Havryliuk by his neck which was injured, forced him to face the cameras and beat him on the head and leg.

307. The court accepted Mr Kravets' reconciliation agreement and, taking into consideration the agreement reached on punishment, imposed a suspended sentence of two years' restriction of liberty and excluded him from holding a law enforcement post for a year. Mr Kravets was also required to present the victim with a written apology.

308. As to Mr Lomonos, the court took into consideration the mitigating circumstances (an admission of guilt, a public apology, reconciliation with the victim and the accused's family situation) and, finding no aggravating circumstances, imposed a suspended sentence of three years' imprisonment and excluded Mr Lomonos from holding a law enforcement post for a year.

309. If the exclusion orders against Messrs Lomonos and Kravets were to be fully applied, they would in principle be able to return to service in May 2015.

[143] Casefile no. 12014100010000559.

(b) Failure by senior Internal Troops to stop the ill-treatment (neglect of duty)[144]

310. On 26 June 2014 Lieutenant-colonel Kryvolap was charged with failing to stop the unlawful actions described above. It was alleged that he was present at the scene and had witnessed the abuse by his subordinates but had taken no action to stop it and had failed to notify the crime to an investigating authority.

311. On 11 July 2014 the case was sent to Pecherskyi District Court, accompanied by the PGO's petition to exempt Lieutenant-colonel Kryvolap from criminal responsibility due to a change of circumstances: the accused had admitted his guilt in full, repented, apologised to the victim and had become reconciled with the latter. He had assisted, and continued to assist, with the investigations. On 18 July 2014 the Pecherskyi District Court exempted Mr Kryvolap from responsibility: it found that the circumstances had changed to the extent that it was improbable that Mr Kryvolap would commit another crime.

312. On 19 September 2014, Captain Osipchuk (a commander in the Internal Troops) made a statement accepting that he had committed a crime against Mr Havryliuk. On 26 September 2014 the MID of the PGO notified him of suspicion of the crime of neglect of duty and, in particular, the crime of failing to take action to stop the unlawful acts against Mr Havryliuk.

313. On 16 October 2014 the criminal case and the indictment were sent to Pecherskyi District Court. The accused pleaded guilty at trial. On 4 November 2014 the court delivered judgment accepting his plea of guilt. It imposed a suspended sentence of one year's restriction of liberty and excluded him from holding a law enforcement post for a year. The court took into account mitigating circumstances (his plea of guilt and the remorse he expressed), his personal circumstances (no criminal record and his family situation) and the fact that the victim had not insisted on a severe punishment.

(c) Other pending proceedings

314. On 25 November 2014, the PGO notified a Colonel of the Internal Troops, of suspicion of abuse of office and neglect of duty, in that he had humiliated the victim by filming him naked. It would appear that on 17 January 2015 the PGO submitted an indictment to the court.

315. The MoI has not indicated that any officer had been disciplined in respect of this incident. The pre-trial investigations into the assault on Mr Havryliuk continue[145].

4. The PGO investigation concerning the abusive prosecution of protesters[146]

(a) The scope of the investigation

316. In January and February 2014 over 130 protesters were prosecuted as a result of their participation in the protests. While the PGO indicated that most of those prosecutions had been closed under the Amnesty Law of 21 February 2014, this criminal investigation had been opened to establish any abuse of power by the authorities.

[144] Casefile no. 42014000000000615.
[145] The PGO confirmed to the Panel that the identification of others involved will be researched through footage and forensic portrait examination, once relevant materials have been gathered, including pictures of Berkut special riot police officers from different regions of Ukraine who might have been present at the scene.
[146] Casefile no. 42014100070000020.

(b) Pre-trial investigation

317. The PGO investigation indicates that, from January to February 2014, Berkut officers, Internal Troops and other MoI law enforcement officers apprehended persons solely because they had participated in the protests, knowing that there was no basis for their arrest and in violation of the requirements of the law. Those persons had been delivered to district police offices. Investigators and prosecutors had opened criminal proceedings without any legal basis and investigating judges had ordered their pre-trial detention without foundation.

318. At the press conference of the PGO on 19 November 2014, it was indicated that the PGO would shortly proceed against 28 investigators, nine prosecutors and 13 judges.

5. Investigations by the Kyiv City Prosecutors Office (EuroMaidan investigations)

(a) Scope of the investigations

319. The EuroMaidan investigations are a series of investigations assigned to the Kyiv City Prosecutor's Office which cover numerous incidents, some of particular significance: the actions of law enforcement officers against protesters and journalists on 1 December 2013 on Bankova Street[147]; crimes of law enforcement officers relating to AutoMaidan activities and activists; crimes relating to the assignment of the weapons to Berkut forces which later disappeared[148]; an armed attack allegedly committed by Berkut officers against officers of the State Guards on Hrushevskoho Street in Kyiv on 20 February 2014, in which firearms were seized[149]; the unjustified pre-trial detention of protesters arising from an abuse of power and authority by the police, prosecutors and the courts[150]; and judicial misconduct leading to unjust judgments, including one casefile about the adoption of unjust judgments by three judges of the District Courts of Kyiv to restrict the right of citizens to peaceful assembly on 21 November and 30 November 2013 and 1 December 2013.

320. However, apart from recent developments as regards the members of AutoMaidan (described below), the Panel has not been informed that any notice of suspicion has been served by Kyiv City Prosecutor's Office in any of these cases.

(b) The AutoMaidan proceedings

321. The PGO informed the Panel that approximately 500 complaints of, *inter alia*, false prosecutions, illegal detention and ill-treatment had been registered and were being investigated. The suspects were law enforcement officers and judges.

322. On 22 October 2014 members of AutoMaidan protested in front of the PGO's office about the lack of progress in this investigation. The only substantial information from the PGO in relation to this investigation was received by the Panel in December 2014.

323. While one MoI official had been notified of suspicion in September 2014, approximately 30 traffic police and a Berkut officer were notified of suspicion of AutoMaidan-related crimes in October and November 2014. One of the notices of suspicion served on a traffic police officer was dated 7 March 2014.

324. The PGO announced on 29 January 2015 that a number of indictments had been sent to court. At a press conference of 2 February 2014, Mr Yarema confirmed that two judges of the Pecherskyi District Court had been notified of suspicion as regards their annulment of the driving licences of certain AutoMaidan activists.

[147] Casefile no. 42013110000001056.
[148] Casefile no. 42014100000000201.
[149] Casefile no. 42014100000000225.
[150] Casefile no. 42014100000000419.

(c) Unlawful actions against journalists

325. The PGO submissions of December 2014 also provided some information as regards consolidated investigations[151] pursued by the Kyiv City Prosecutor's Office. They concern violence inflicted by law enforcement officers, including by Berkut officers, on journalists, photographers and mass media personnel on 1 and 3 December 2013 and on 10 January and 19-27 January 2014, and involve, it appears, in the region of 100 victims. Amnesty International and the Joint NGO submissions to the Panel pointed to a high level of targeted ill-treatment of journalists during the Maidan demonstrations and the representatives of the Heaven's Hundred NGO complained to the Panel about a lack of progress in these investigations.

326. The Panel has not been informed that any notices of suspicion have been issued in this casefile.

C. Investigations conducted by the MoI

327. The MoI is charged, under the supervision and procedural guidance of the PGO, with the following investigations. All are conducted by the MID of the MoI, except for a small number of investigations with local MoI agencies in Kyiv.

1. Deaths and injuries of law enforcement officers (18-20 February 2014)[152]

(a) Statistics

328. The MoI informed the Panel that 13 law enforcement officers had died from gunshot wounds between 18 and 20 February 2014[153]. These were mainly Internal Troops and Berkut officers, as well as one patrol service officer. In many cases the bullet had exited the body so that no ballistics tests could be carried out. However, since there was no powder traces found on the uniforms of the deceased, the MoI considered that relatively powerful weapons had been used.

329. According to the MoI oral submissions to the Panel of November 2014 to the Panel, four officers were killed by Makarov pistols[154], three officers were killed by 7.62 mm calibre bullets (either a Kalashnikov or a sniper rifle of that calibre) and the remaining officers were killed by smooth-bore, hunting weapons. All police officers had been killed from ground level and not from a height.

330. As to the injuries sustained, the MoI Health and Rehabilitation Department recorded that 919 law enforcement officers had been injured from 30 November to 23 February 2014[155]. Of these, 207 officers had been injured on 18-20 February and had formally been recognised as victims within these criminal proceedings. 79 of the injuries were caused by firearms.

[151] Casefile nos. 42014100000000031; 42014100000000383; 12014100020000391; and 42013110000001056.
[152] Casefile no. 4201400000000061.
[153] See Annex X, Law enforcement officers killed and injured during the Maidan demonstrations.
[154] A Makarov pistol is standard issue to law enforcement officers but is also a relatively widely available weapon in Ukraine.
[155] See Annex X, Law enforcement officers killed and injured during the Maidan demonstrations.

(b) The casefile

331. On 3 March 2014 the MID of the PGO entered information in the Unified Register as regards the murder by firearms of 13 law enforcement officers and the injury of 207 law enforcement officers from 18-20 February 2014.

332. On 13 June 2014 the casefile was transferred from the PGO to the MoI[156].

(c) Status of the investigations into the deaths and injuries of law enforcement officers (18-20 February)

333. In November 2014 MoI representatives informed the Panel that, whilst there was a group of persons who could have been involved, they had not identified any particular suspect. The MoI suggested that not all injured law enforcement officers had wanted to be recognised as victims. It was difficult to identify those who had killed and injured police officers given the sheer numbers of possible suspects, the potential variety of locations of the shooters and the fact that many had masked their faces and/or wore helmets.

334. In their submissions of 1 January 2015 to the Panel, the PGO stated that the investigations into the deaths of law enforcement officers had been transferred to the newly established SID of the PGO.

335. According to the information before the Panel, no one has been notified of suspicion of killing or injuring a law enforcement officer.

2. Investigation concerning Dmytro Bulatov

336. Mr Bulatov was one of the organisers of AutoMaidan and, on the evening of 22 January 2014, he was abducted, detained and severely ill-treated until his release on 30 January 2014[157].

337. There are two pending investigations: one opened on 31 January 2014 concerning his abduction and detention and, a second,[158] opened by the PGO on 5 March 2014, concerning his ill-treatment. Given the circumstances of the crime and the events that preceded its commission, the MoI are examining a number of theories as regards his abduction, including that it was an abduction to extort a ransom from Euromaidan leaders or that it was connected to certain debt issues. However, to date the only evidence in the casefile is the statement of Mr Bulatov himself.

3. Investigations concerning Ihor Lutsenko and Yurii Verbytskyi[159]

338. 13 suspects, most of them titushky, as well as Messrs Zubrytskyi and Chebotariov, have been served with notices of suspicion on various charges related to these incidents[160].

339. Two suspects were arrested, notified of suspicion and detained. On 20 August 2014 the indictments were submitted to the court. However, on 16 October 2014 the trial court returned the indictments citing certain shortcomings in them. The prosecutor's appeal was due to be heard on 12 December 2014. The Panel has not been informed of the outcome of the appeal.

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[156] As of December 2014, 55 criminal cases had been combined within this casefile. These include 12 cases of deliberate homicide; one case of deliberate infliction of serious bodily harm resulting in death; 16 cases (32 victims) of attempted murder; and 26 cases of violence against law enforcement officers. Ten court rulings had been obtained to provide access to secret materials.

[157] See paragraph 62 above.

[158] Casefile nos. 12014100020000701 and 42014000000000059.

[159] Casefile no.1201411010000000089 and see paragraph 58 above.

[160] Messrs Zubrytskyi and Chebotariov are suspected of being key organisers of titushky. Mr Zubrytskyi is already charged in the PGO casefile concerning titushky (see paragraph 292 above).

340. The proceedings concerning the remaining 11 suspects have been suspended: ten suspects are on the wanted list and the eleventh is being pursued through international co-operation arrangements.

4. Investigation concerning Tetiana Chornovol[161]

341. On the date of the assault, the MID of the MoI opened a pre-trial investigation[162] on charges of hooliganism. MoI press releases indicated that, by 26 December 2013, charges of infliction of bodily harm had been added and that, by 30 December 2013, five suspects had been identified and a series of investigative acts completed. By mid-January 2014, the MoI reported that all investigative steps had been taken, pending the participation of the victim in the investigation.

342. The MoI submitted that the investigation indicated that five men had met in the centre of Kyiv as one of them had a car for sale. They took the car for a test drive. Ms Chornovol's car had cut across them, they gave chase and forced her car to stop. She tried to escape on foot and two of the men punched her on the head and in the face several times. When the pre-trial investigation as regards all five suspects had been completed, the case was transferred to a court on charges of hooliganism and infliction of bodily harm.

343. In public statements on 24 February 2014 (to the Verkhovna Rada) and on 26 February 2014 (in a press conference), the Prosecutor General stated that he had taken the case back from the trial court for a pre-trial investigation on charges of attempted murder. On 6 June 2014 this pre-trial investigation in relation to two suspects[163] was completed and the indictment was submitted to court. On 16 June 2014 the court held a preparatory hearing and in December 2014 the PGO confirmed that a further hearing was taking place. The Panel has not been informed of the outcome.

344. The criminal proceedings[164] against the other three suspects are suspended as they are missing. On 13 January 2014 one of these suspects was put on an international wanted list. On 5 February 2014 he was detained in Moscow by officers of the MoI of the Russian Federation. In April 2014 a request for assistance was sent to the Russian Federation. The MoI confirmed to the Panel in November 2014 that extradition had been denied on the basis that the prosecution was political. The PGO submissions to the Panel of December 2014 appear to indicate that the charges under this casefile have been re-qualified to one of attempted murder by a group for material gain.

5. Investigations conducted by the territorial offices of the MoI in Kyiv

345. The MoI also provided information about five investigations being conducted by its territorial offices.

346. Two assault cases were dismissed in late March 2014 by the Pecherskyi district office of the MoI.

347. The remaining three investigations are pending and the Panel has not been informed of any notifications of suspicion. The first[165] concerns the explosion of ammunition supplies in the Trade Union Building on 6 February 2014, involving grave injuries to two persons. The second concerns the beating by Berkut officers of two persons which was entered in the Unified Register on 10 January 2014 and apparently transferred, on 13 January 2014, to a

[161] See paragraph 48 above.
[162] Casefile no. 12014000000000046.
[163] Casefile no. 12013100100002594.
[164] Casefile no. 12014000000000046.
[165] Casefile no. 1201410000001054.

district prosecution office. The third investigation[166] was initiated by the Pecherskyi district office of the MoI on 7 March 2014 and concerns the intentional infliction of minor injuries on 18 February 2014 on an Inspector of MoI Patrol Platoon No. 3, during public order duties in Kyiv.

D. Investigations conducted by the SSU

348. In response to Panel questions about the PGO's criticism of the SSU's lack of co-operation with it, the Chief of the SSU informed the Panel that its priority was to find three former SSU Generals, but maintained that it had given full co-operation to the PGO and that the PGO had never complained.

1. The SSU investigations

349. The bi-monthly public reports of the PGO to the Verkhovna Rada on the Maidan investigations indicate that four criminal proceedings were allocated to the investigatory jurisdiction of the SSU. The PGO and the SSU later clarified to the Panel that those four investigation casefiles concerned[167] instances of separatism, actions aimed at the violent overthrow or change of the constitutional order or seizure of State power and State treason, and that they did not directly concern the events at Maidan or the related PGO investigations. The SSU were represented at the two joint press conferences of the investigations bodies on 3 April and 8 December 2014, as well as at the joint meeting of two Parliamentary Committees on the Maidan investigations on 10 December 2014.

2. Casefile no. 22014000000000328

350. Following the opening of a pre-trial investigation on 4 August 2014, on 7 November 2014 the MID of the SSU drew up a notification of suspicion of State treason in relation to the former Chief of the SSU (Mr Yakymenko), the former Head of the Department for Opposing Cybercrimes and, from 5 February 2014, of the Counterintelligence Department (General Bik) as well as two other high-ranking SSU officials. They were put on a wanted list as their whereabouts were unknown.

351. Mr Nalyvaichenko provided the Panel with certain details concerning the level of infiltration of the former SSU by FSB operatives during the Maidan demonstrations and the PGO confirmed to the Panel that the allegations being investigated were that high-ranking SSU officials, including Mr Yakymenko and General Bik, had established contact in December 2013 with the FSB to conduct subversive activities against Ukraine.

352. On 7 November 2014 General Bik was detained by SSU forces in Kharkiv. He was served with a notice of suspicion. On 8 November 2014 a court ordered his pre-trial detention and set bail at 5 million US dollars. On 25 November 2014 the criminal casefile was transferred to the PGO for further investigation and, on the same day, the PGO referred the matter to the investigative jurisdiction of the Main Military Prosecutor's Office, within the PGO structure.

[166] Casefile no.120141000600010341O.
[167] In accordance with Article 216 of the CPC.

V. SUMMARY OF THE CURRENT STATUS OF THE INVESTIGATIONS

The investigations into the events of 30 November 2013 (PGO):

353. The original proceedings against high-ranking organisers of the operation[168] have become deadlocked by amnesty-related issues and three suspects have absconded. A second action had been commenced against those high-ranking organisers: however, the three suspects remain missing and, while the case against Mr Popov has proceeded to trial, the case against Mr Marynenko has not. Four former Berkut officers were notified in early 2015 of suspicion of an abuse of power in obstructing the demonstration.

The investigations into the use of special means (PGO):

354. All but one (Mr Lekar) of the high-ranking officials notified of suspicion have absconded and the proceedings against them have been suspended. The Panel has not been informed of a trial date as regards Mr Lekar. It does not appear that any law enforcement officer has been notified of suspicion as regards the use of special means.

The investigations into the deaths and injuries by firearms (PGO):

355. By the end of February 2014 a number of high-ranking officials of the former regime had been notified of suspicion of organising serious crimes against the Maidan demonstrators[169]. All have absconded and the proceedings against them are suspended.

By April 2014 two Berkut commanders had been notified of suspicion of organising and carrying out killings[170]. Both commanders have absconded: Mr Kusiuk during the change of government and Mr Sadovnyk recently from home arrest in the circumstances described above[171]. In April 2014 two Berkut officers (Messrs Abroskyn and Zinchenko) were also notified of suspicion of murder and arrested: they remain in pre-trial detention and await trial. In late February 2015, 20 additional Berkut officers were notified of suspicion and two were arrested.

The investigations of non-firearm injuries, 18-20 February 2014 (PGO):

356. The Panel has not been provided with any information about this investigation nor has it been informed that anyone has been notified of suspicion.

The titushky investigations (PGO):

357. Certain titushky have been notified by the PGO of suspicion of Mr Veremii's assault and murder: seven are on wanted lists so that proceedings against them are suspended and, while the pre-trial investigation as regards one suspect (Mr Krysin) has ended, the Panel has not been informed of a trial date.

[168] Messrs Kliuiev, Sivkovych, Popov, Koriak, Marynenko and Fedchuk.
[169] Messrs Yanukovych, Zakharchenko, Ratushniak, Yakymenko, Pshonka and Shuliak.
[170] Messrs Kusiuk and Sadovnyk.
[171] See paragraphs 274-282 above.

Public statements of the investigating bodies, as well as their submissions to the Panel, gave details of early suspicions as to the responsibility of key titushky and MoI officials, although none has been notified of suspicion by the PGO.

Investigations have recently begun against certain transport companies for transporting titushky. Recent public statements also indicate that four additional titushky suspects have been arrested and that others have been put on wanted lists: it is not known to which casefile these latest developments relate.

The investigations concerning Mykhailo Havryliuk (PGO):

358. Two servicemen of the Interior Troops were convicted of abuse of power and two senior officers were tried on charges of failing to stop subordinates ill-treating Mr Havryliuk. None of the officers has served a term of imprisonment. It appears that an indictment was recently submitted to the court in respect of a Captain of the Internal Troops.

The investigations into the abusive prosecution of protesters (PGO):

359. In October 2014 notices of suspicion were served on three investigators of the Investigation Department of Solomyansky District Police Unit, on two prosecutors of Solomyanskyi Prosecutor's Office in Kyiv and on an investigative judge of Solomyanskyi District Court in Kyiv. It was announced in November 2014 that the PGO would shortly proceed against several additional investigators, prosecutors and judges.

The investigations by the Kyiv City Prosecutor's Office:

360. Notifications of suspicion were served as regards the AutoMaidan crimes only: one MoI official (notified in September 2014), about 30 traffic police and one Berkut officer (in October and November 2014) and two judges of the Pecherskyi District Court (in early 2015). A key casefile, concerning the injuries of hundreds of protesters by law enforcement officers on 18-20 February 2014, was transferred from the Kyiv City Prosecutors office to the PGO due to the lack of investigative activity on the part of the former.

The investigations of crimes against law enforcement officers (MoI):

361. While there is a single investigation into the fatal shooting of 13 law enforcement officers and the injury of 207 officers during 18-20 February, no one has been notified of suspicion in this respect. The Panel has received no information as to whether any investigation has been initiated into the injury of approximately 700 other law enforcement officers.

The investigations concerning Dmytro Bulatov (MoI):

362. The pre-trial investigation continues. No one has been notified of suspicion.

The investigations concerning Ihor Lutsenko and Yurii Verbytskyi (MoI):

363. Over ten titushky suspects have been notified of suspicion as well as Messrs Zubrytskyi and Chebotariov. Two have been arrested, their indictments have been returned by the trial court and an appeal appears to be still pending.

The investigations concerning Tetiana Chornovol (MoI):

364. Five suspects have been notified of suspicion. The case against the two suspects who are in the jurisdiction is pending before a criminal court. The charges against the other three suspects have been re-qualified to attempted murder and the proceedings are suspended because the suspects are missing.

The investigations conducted by the territorial offices of the MoI:

365. The Panel has not been informed that anyone has been notified of suspicion under any of these casefiles.

The investigations conducted by the SSU:

366. The SSU arrested General Bik and the criminal case-file was transferred to the PGO for further investigation.

THE PANEL'S ASSESSMENT

I. GENERAL

A. The procedural requirements of Articles 2 and 3 of the Convention

367. The mandate of the Panel required it to assess the compliance of the Maidan investigations as a whole with the procedural requirements of Articles 2 and 3 of the Convention. Since it was not the Panel's role to determine whether investigations of an individual case satisfied the requirements of Articles 2 and 3 of the Convention, the Panel did not seek to distinguish between persons who had suffered ill-treatment falling inside or outside of the scope of Article 3 of the Convention. Moreover, in light of the converging principles deriving from Articles 2 and 3 the Panel has examined the compliance of the relevant investigations with both provisions together. These principles are well established[172].

368. In interpreting Articles 2 and 3, the European Court is guided by the knowledge that the object and purpose of the Convention, as an instrument for the protection of individual human beings, requires that its provisions be interpreted and applied so as to make its safeguards practical and effective. Article 3, like Article 2, must be regarded as one of the most fundamental provisions of the Convention and as enshrining core values of the democratic societies making up the Council of Europe.

369. The general legal prohibition of arbitrary killing and of torture and inhuman or degrading treatment or punishment by agents of the State would be ineffective in practice if there existed no procedure either for reviewing the lawfulness of the use of lethal force by State authorities, or for investigating arbitrary killings and allegations of ill-treatment of persons held by them.

370. Thus, having regard to the general duty on States under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", the provisions of Articles 2 and 3 require by implication that there should be some form of effective official investigation, both when individuals have been killed as a result of the use of force by, among others, agents of the State, and where an individual makes a credible assertion that he has suffered treatment infringing Article 3 of the Convention at the hands of such agents. Even in the absence of an express complaint, an investigation should be undertaken if there are sufficiently clear indications that ill-treatment might have occurred.

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[172] They have been summarised in, for example, the judgments in *Nachova and Others v. Bulgaria* [GC], applications nos. 43577/98 and 43579/98, §§ 110-113, ECHR 2005-VII; *Ramsahai and Others v. the Netherlands* [GC], application no. 52391/99, §§ 324-325, ECHR 2007-II; *Al-Skeini and Others v. the United Kingdom* [GC], application no. 55721/07, §§ 162-167, ECHR 2011; *Association "21 December 1989" and Others v. Romania*, applications nos. 33810/07 and 18817/08, §§ 133-135, judgment of 24 May 2011; *Giuliani and Gaggio v. Italy* [GC], application no. 23458/02, §§ 298-306, ECHR 2011; *El-Masri v. "the former Yugoslav Republic of Macedonia"* [GC], application no. 39630/09, §§ 182-185, ECHR 2012; *Jaloud v. the Netherlands* [GC], application no. 47708/08, § 186, ECHR 2014; and *Begheluri and Others v. Georgia*, application no. 28490/02, § 99, judgment of 15 January 2015. See also, *Mocanu and Others v. Romania*, a case concerning the violent dispersal by the security forces and mobilised civilians of a demonstration in University Square in Bucharest in June 1990 ([GC], applications nos. 10865/09, 45886/07 and 32431/08, §§ 316-326, ECHR 2014 (extracts)). As regards cases against Ukraine, see, among many others, *Davidov and Others v. Ukraine*, applications nos. 17674/02 and 39081/02, judgment of 1 July 2010; *Nechiporuk and Yonkalo v. Ukraine*, application no. 42310/04, 21 April 2011; *Aleksakhin v. Ukraine*, application no. 31939/06, judgment of 19 July 2012; and *Savitskyy v. Ukraine,* application no. 38773/05, 26 July 2012.

371. The Court has already held this obligation to investigate applies even in difficult security conditions, including in a context of armed conflict. Even where the events leading to the duty to investigate occur in a context of generalised violence and investigators are confronted with obstacles and constraints which compel the use of less effective measures of investigation or cause an investigation to be delayed, Articles 2 and 3 require that all reasonable steps should be taken to ensure that an effective and independent investigation is conducted.

372. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and prohibiting torture and inhuman or degrading treatment and punishment in cases involving State agents or bodies, and to ensure their accountability for deaths and ill-treatment occurring under their responsibility. More generally, an adequate response by the authorities in investigating allegations of serious human rights violations may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of impunity for, collusion in or tolerance of unlawful acts. This is particularly relevant when the investigation concerns massive violence perpetrated by or on behalf of the State authorities against those participating in anti-government protests which aimed at a transition to a more democratic society: given the importance of the political and societal issues at stake there is an acute need to ensure an effective response by the criminal justice system of the new government to the violence perpetrated by the former.

373. The vital importance of an investigation for society ought to prompt the domestic authorities to conduct an effective investigation that would cover, not only those having the command responsibility but also direct perpetrators, in order to prevent any appearance of tolerance of or collusion in unlawful acts.

374. Whilst the majority of the Maidan-related investigations are directed against State officials and officers, it is not excluded that some of the perpetrators may have been private individuals. However, the scope of the requirements of an official investigation is substantially the same.

375. Once the investigative obligation is triggered, the investigation must comply with a number of particular requirements. The investigation must be **independent** and it must also be **effective**. A requirement of **promptness and reasonable expedition** are implicit in this context. **The victims or next-of-kin must be adequately involved** in the procedure and there must be a sufficient element of **public scrutiny** of an investigation and of its results. The Panel has addressed below each of these elements in turn, however it has preceded this analysis by a brief outline of the relevant law enforcement environment.

B. The impunity of law enforcement officers

1. European Court's jurisprudence on impunity of law enforcement officials in Ukraine

376. In a number of cases the European Court has pointed to a lack of meaningful efforts on the part of the Ukrainian authorities to combat ill-treatment by law enforcement authorities, finding that this had contributed to fostering a climate of virtually total impunity for torture or ill-treatment committed by law enforcement agencies in Ukraine.[173]

[173] *Savin v. Ukraine*, application no. 34725/08, § 71, judgment of 16 February 2012; *Kaverzin v. Ukraine*, application no. 23893/03, § 178, judgment of 15 May 2012; and *Aleksakhin v. Ukraine*, cited above, § 58. For cases regarding the failure to conduct prompt, independent and effective investigation into ill-treatment by special police forces see *Davidov and Others v. Ukraine*, cited above, and *Danilov v. Ukraine*, application no. 2585/06, judgment of 13 March 2014.

2. *International governmental and non-governmental organisations on impunity and corruption in Ukraine*

377. The problem of impunity and lack of accountability of law enforcement officers in Ukraine has similarly been highlighted by CoE bodies, and by international non-governmental organisations working in Ukraine. In particular, they have noted the pervasive proclivity of the authorities in Ukraine to allow crimes committed by law enforcement agents to go unpunished. The Council of Europe has long considered that "impunity must be fought as a matter of justice for the victims, as a deterrent to prevent new violations, and to uphold the rule of law and public trust in the justice system".[174]

378. The CPT noted a lack of effective investigation into cases of possible ill-treatment by MoI staff, highlighting a "widespread perception of impunity". The CPT criticised the procedure under which prosecutors based their decision as to whether to institute criminal proceedings against an officer allegedly involved in ill-treatment on the evidence collected by officers from the same service. It urged the Ukrainian Government to establish an independent agency, separate from law enforcement structures and the public prosecution service, specifically for the purposes of investigating complaints against law enforcement officials.[175]

379. The CoE Commissioner for Human Rights has underlined Ukraine's long-standing problem of impunity for ill-treatment and torture committed by the police. The Commissioner found the investigations into such violations by MoI departments to be ineffective since "it is often members of the same force who are investigating their colleagues and there is sometimes a 'code of silence' about protecting one's own".[176] He emphasised the crucial role of the public prosecution service in combating impunity and ill-treatment and the need for a clear legislative and policy framework ensuring the prevention and punishment of such misconduct.[177] The Commissioner further encouraged the Ukrainian authorities to establish an independent police complaints mechanism to combat impunity for serious human rights violations.[178]

380. The CoE Directorate General of Human Rights and Rule of Law considered that the establishment of a fully independent police (law enforcement) complaints (investigative) body would be the most appropriate response to the longstanding problem in Ukraine of the authorities' tolerance of ill-treatment and other law enforcement abuses.[179]

381. Amnesty International has highlighted the lack of accountability of law enforcement officers in Ukraine for torture and ill-treatment for a number of years. It underlined the long-existing climate of impunity of law enforcement officials and it similarly called on the Ukrainian authorities to establish an effective police complaints procedure.[180]

382. The CoE monitoring bodies have also raised a further issue, related to the problem of impunity of law enforcement officials. In a number of its reports, the CPT stressed the need

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[174] See generally, Council of Europe Guidelines of 30 March 2011 on Eradicating Impunity for Serious Human Rights Violations, as referred to in *El-Masri v. "the former Yugoslav Republic of Macedonia"*, cited above, § 192.
[175] Report of the CPT dated 23 November 2011, § 20; Report of the CPT, dated 5 December 2013, § 39; Report of the CPT dated 29 April 2014, §§ 23-25; Report of the CPT dated 13 January 2015, § 48.
[176] Report by the CoE Commissioner for Human Rights, 4 March 2014, § 32.
[177] Ibid., §§ 28 and 30.
[178] Ibid., §§ 21 and 32.
[179] Opinion on the Draft Criminal Procedure Code of Ukraine, 2 November 2011, §§ 41-42.
[180] Amnesty International October 2011, "No Evidence of a Crime: Paying the Price for Police Impunity in Ukraine".

to be able to identify the law enforcement officers who had used force by clearly distinctive insignia and prominent identification numbers on each uniform or helmet.[181]

383. The CoE Commissioner for Human Rights also noted the legislative gaps with regard to the identification of police officers participating in policing demonstrations.[182]

384. The fight against impunity of law enforcement officers has also reportedly been undermined by large-scale corruption in Ukrainian public institutions and in the judiciary. In the preface to the Report on the State of Democracy, Human Rights and Rule of Law in Europe issued in 2014, the Secretary General of the Council of Europe highlighted the absence of an independent judiciary in Ukraine.[183] The CoE Commissioner for Human Rights and GRECO (Group of States against Corruption) reported that the judiciary in Ukraine was marked by widespread corruption and called upon Ukraine to reform the system and take steps to renew public confidence in the judiciary.[184]

3. Public statements by State officials

385. Since the Maidan events, there have been a number of public statements by senior State officials, reflecting an unwillingness to hold responsible all the perpetrators of crimes during the Maidan demonstrations.

386. Amnesty International submitted to the Panel that, owing to the need to deploy MoI forces to the conflict in the East, the political will to investigate crimes committed by police officers during the Maidan demonstrations was weak. Amnesty International referred, in particular to statements by Mr Turchynov, in his capacity as Acting President, to the effect that it was not excluded that Berkut officers, who had been involved in the anti-terrorist operation in the East and who were suspected of human rights breaches during the Maidan events, might be released from criminal responsibility. Reference was also made to the statement of the Acting Head of the Presidential Administration, Serhii Pashynskyi, who stated on 5 May 2014 that only those Berkut officers found to be responsible for the killing and torture of protesters would be prosecuted.[185]

387. In addition, on 12 May 2014 the Minister of the Interior, Mr Avakov, signed a letter to the PGO in which he indicated that the very existence of criminal proceedings, or even the indirect possibility for law enforcement officers being accused of committing a crime, would have a significant effect on their psychological state, and would give rise to embarrassment, lack of initiative and a failure actively to carry out their duties. In view of the above, Mr Avakov requested the PGO to consider the possibility, pending the Presidential elections, of focusing the investigations on actions which did not require the attendance of law enforcement officers, unless there was reliable information of their involvement in criminal offences. The Minister also suggested that consideration be given to initiating legislation to release from criminal liability police officers who carried out their duties during the mass protests between November 2013 and February 2014, in the absence of indisputable evidence of their having committed serious or extremely serious offences.

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[181] Report of the CPT dated 29 Arpil 2014, §§ 50-54. See also Report of the CPT dated 13 January 2015.
[182] Report by the CoE Commissioner for Human Rights, 4 March 2014, §§ 19, 30-31.
[183] State of democracy, human rights and the rule of law in Europe (2014), Report by the Secretary General of the CoE.
[184] GRECO Evaluation Report on Ukraine, March 2007, §§ 88-90, 239; The CoE Commissioner for Human Rights, Report of 26 September 2007, §§ 4-13; Report of 23 February 2012, §§ 24, 46-51; Report of 4 March 2014, §§ 50 and 60. For an outline the comments of the CoE Commissioner for Human Rights and of GRECO, see also IAP Information Note No. 8.
[185] Amnesty International June 2014, "Ukraine: A New Country or Business as Usual?", pp. 3-4.

388. On 1 August 2014 President Poroshenko stated in an interview that he might have to amnesty some of the Berkut and Alpha officers who had participated in the public order duties at Maidan and who had gone bravely to fight in the East. President Poroshenko further maintained that granting such an amnesty would constitute a just course of action since the Berkut officers "have redeemed their guilt with their own blood".[186] On 25 September 2014 President Poroshenko suggested that certain people should be acquitted of crimes that had taken place on Hrushevskoho and Instytutska Streets: Berkut officers and members of Internal Troops who had gone to fight in the East on Ukraine's behalf, had atoned for their deeds and should be protected.[187]

4. The Berkut Special Force and the new force created by Decree of 8 May 2014

389. Law enforcement units and, in particular Berkut units, played a significant role in the Maidan events between November 2013 and February 2014.[188] They are widely seen as having been instrumental in the suppression of the demonstrations.

390. After the Maidan events, at the end of February 2014, the Minister of the Interior disbanded the Berkut special force and, subsequently, created another special police force for public order protection.[189] The decree of 8 May 2014 establishing the new special police force for public protection is substantially the same as the decree of 24 October 2013, which governed the functioning of the Berkut police force[190]. According to the MoI, a commission was created for the purposes of vetting Berkut officers. The Panel put oral and written questions to the MoI to establish the precise number of Berkut officers who had successfully passed the vetting procedure, been transferred to other posts or been dismissed. However, the Panel did not receive consistent or clear replies to its queries.

391. It has been reported by the lawyers representing victims in Maidan cases that the newly created special police force for public protection is currently managed by senior officials from the former Berkut.[191] In his public statement, the Head of the newly established SID Mr Horbatiuk commented that, apart from making some staff reductions, these changes merely amounted to a change of title of the Berkut special unit rather than being a genuine attempt to deal with those who had been implicated in the Maidan events.[192]

C. The investigations prior to 22 February 2014

392. The Panel accepts that there were many operational obstacles to the carrying out of effective investigations during the three-month period of the Maidan demonstrations. Most of the crime scenes were in parts of Kyiv controlled by the protesters, rendered inaccessible by manned barricades and the site of mass and violent conflict. The bodies of the dead and injured had very often been moved, thereby compromising the investigation of the circumstances of the relevant incident, including, for example, the trajectory of bullets. Medical records were to be found in different locations and were often not complete: injured persons had been treated in a variety of on-site medical centres out of necessity or out of fear,

[186] News report of 1 August 2014. Extract from the video recording of the press-conference of 1 August 2014.
[187] Video recording of the press-conference of 25 September 2014: (relevant statements at 1:39:07).
[188] See Annex VII for information on law enforcement formations in Ukraine. For detailed description of the role of law enforcement agencies in a public order context, see IAP Information Note No. 12.
[189] The text of the decree available in Ukrainian at: http://zakon2.rada.gov.ua/laws/show/z0490-14.
[190] http://zakon2.rada.gov.ua/laws/show/z0019-14 (in Ukrainian only).
[191] Interview of Mr Taras Hataliak on 6 January 2015; Interview of Messrs Pavlo Dykan and Vitalii Tytych on 15 December 2014.
[192] Interview of Mr Horbatiuk on 23 January 2015.

since there had been reported instances of persecution, including kidnappings, of those admitted to hospital with protest-related injuries; certain persons had gone abroad for medical treatment as they feared for their safety; some victims who had gone to hospital gave false information to hide the source of their injuries; and submissions were made to the Panel that hospitals had failed properly to preserve evidence, notably bullets which had been extracted from bodies. Distrust of the authorities was such that victims did not lodge complaints which would have disclosed their presence at the protests.

393. However, even accepting these operational difficulties, there was little evidence before the Panel attesting to a genuine attempt on the part of the authorities prior to 22 February 2014 to pursue investigations of the acts of violence during the Maidan demonstrations, beyond the mere registration of complaints made in the Unified Register.

394. There were exceptions, where investigations were pursued into events that had attracted media coverage, nationally and internationally. However, even these investigations were not pursued with any practical effect.

395. Thus, an investigation into the illegal dispersal of protesters in the early morning of 30 November was initiated relatively speedily. However, in January 2014 the Pecherskyi District Court exempted all five high-ranking suspects from liability and complications related to the amnesty granted to the suspects have blocked the proceedings ever since, with the exception of those against one suspect. No law enforcement officers were notified of suspicion at a time when their superiors would have had no difficulty in identifying the officers deployed that night.

396. The investigations into the assaults on Ms Chornovol, Messrs Havryliuk and Bulatov were also opened promptly. However, all three casefiles were reviewed once the new Prosecutor General was appointed on 24 February 2014. As to the serious assault on Ms Chornovol, the new Prosecutor General stated, at the end of February 2014, that he had withdrawn from the trial court an indictment on charges of hooliganism and bodily harm and had re-opened the investigation on charges of attempted murder. As to the ill-treatment of Mr Havryliuk, one of the investigations was conducted by the MoI for over a month even though it was evident from widely viewed Internet footage that he had been ill-treated by law enforcement officers. The various Havryliuk proceedings were eventually consolidated and taken over by the PGO at the end of February 2014. As regards Mr Bulatov, the first investigation launched in January 2014 concerned only his abduction: by 5 March 2014 the new Prosecutor General had added charges of ill-treatment.

397. By contrast, despite the Amnesty Law, proceedings were promptly initiated and expeditiously progressed against hundreds of protesters who were unlawfully arrested and placed in pre-trial detention on various protest-related charges[193]. After 22 February 2014, the PGO set about closing those proceedings and opened criminal proceedings into abuse of office on the part of those responsible.

398. While the MoI press releases of 23 January and 4 February 2014 refer to certain investigatory steps, notably ballistic examinations, as having taken place in relation to the fatal shootings of 22 January 2014, the new Prosecutor General and his Deputy, charged with the Maidan investigations, reported that the MoI investigation files furnished to them as regards the killings and injuries of protesters, which were joined in the PGO's main Maidan investigation (casefile 228), had been essentially empty.

[193] Most were released from liability under the Amnesty law of 21 February and the GPO has begun criminal investigations into such illegal prosecutions, see paragraphs 316-318 above.

Conclusion

399. The Panel concludes that there was no genuine attempt, prior to 22 February 2014, to pursue investigations into the acts of violence during the Maidan demonstrations.

The lack of genuine investigations during the three months of the demonstrations inevitably meant that the investigations did not begin promptly and this constituted, of itself, a substantial challenge for the investigations which took place thereafter and on which the Panel's review has principally focused.

D. The investigations after 22 February 2014: challenges

400. The Panel does not underestimate the considerable challenges confronting the investigations after 22 February 2014.

401. The first, already noted, was the lack of useful investigative activity prior to 22 February 2014. When the new heads of the competent investigating authorities were appointed, three months had already passed since the first violent episode in the early morning of 30 November 2014. The new investigating authorities had to review, re-organise and consolidate any existing individual investigation casefiles with a view to adopting a coordinated strategy for the investigations. In certain cases where an investigation had made some progress, the approach had to be changed[194]. In most cases, the investigation files were effectively empty[195]. Since the cases pursued with the most vigour prior to 22 February had been against protesters, the new prosecuting authorities had to identify wrongful prosecutions, organise their dismissal and take criminal proceedings against the authorities responsible. In practical terms, all remained to be done at the end of February 2014.

402. In addition, the breadth and seriousness of the Maidan-related crimes were unprecedented in Ukraine's recent history. The demonstrations have been much documented and a summary of those events is set out above. Tens of thousands of protesters were camped permanently in Maidan and, at times, several hundred thousand protesters were present in the centre of Kyiv. In the region of 11,000 law enforcement officers were deployed in Kyiv on public order duties during that period[196]. The investigations suggest that hundreds of non-State agents (titushky) were engaged to assault and kill protesters. The reported statistics of deaths and injuries vary but between 78-92 protesters were killed, and, on a conservative estimate over 1,000 were injured; 13 law enforcement officers were shot dead and approximately 900 received injuries. Numerous persons were also subjected to kidnapping, to false criminal and/or administrative proceedings and to other acts of intimidation.

The protests lasted for three months. Whilst there were violent incidents throughout practically the entire period, there were particularly violent clashes in the early morning of 30 November 2013, on 1 December and the night of 10/11 December 2013, on 19-22 January 2014, which resulted in the first deaths of protesters by firearms, and on 18-20 February 2014, which resulted in the mass killings and injuries, including the shooting dead of 49 protesters on Instytutska Street on 20 February 2014.

The crime site was extensive. The maps attached at Annex XI indicate the breadth of the area in the centre of Kyiv controlled by the protesters from November to February 2014.

[194] As outlined at paragraph 396 above.
[195] See paragraph 398 above.
[196] See paragraph 88 above.

While that territory had been somewhat reduced by 18-20 February, in that the protesters no longer held Khreshchatyi Park or Instytutska Street, the protesters essentially controlled the centre of Kyiv from the City Council and State Administration building on Kreshchatyk Street up to Maidan Square, as well as parts of Kostiolna and Hrinchenko Streets. The PGO was required to ensure the supervision of the barricades for evidence gathering purposes until the last barricade was dismantled in August 2014. Between 22 and 27 January 2014 approximately ten official buildings were seized and held by protesters, including the City Council and State Administration and the Ukraina House. The Trade Union Building and the Party of Regions building were burned.

403. A particular difficulty confronting the investigations was the fact that none of the law enforcement officers, who wore full facial masks, had any visible form of marking that could allow their identification. This was contrary to the recommendations of many Council of Europe and other international bodies[197] and has proved to be a significant challenge to the PGO in investigating crimes committed by those officers. The Panel considers it to be a positive development that the MoI internal inquiry report dated 24 April 2014 has recommended the introduction of forms of individual markings of law enforcement officers[198]. The fact that many protesters' faces were obscured by masks, scarves and motorcycle helmets also rendered difficult the investigation of any crimes committed by them.

404. Furthermore, in addition to senior members of the former government, the former heads of the MoI, the SSU and the PGO have absconded, together with a large number of their officials and officers. Extradition attempts have been unsuccessful. The MoI have reportedly stated that over 400 extradition requests, addressed to the Russian Federation since February 2014, have not received a response[199].

The change of government also meant that the investigations had to be pursued by three bodies (the MoI, SSU and PGO) under new leadership. Certain of their staff risked being accused of Maidan-related crimes. Dismissals took place even before the Lustration Law was adopted. The Lustration Law entered into force on 6 October 2014 when the Cabinet of Ministers published a list of high-ranking oficials, including Deputy Ministers, who had been dismissed or had resigned, as well as a list of proposed dismissals.

The change had the further effect that the MID of the PGO took on, in addition to the Maidan-related work, other complex and significant investigations concerning abuse of power and economic crimes by high-ranking officials of the former regime.

405. It is also of importance that there had been a significant decrease in the number of investigating staff of the PGO over the past few years, in line with various CoE and international recommendations to reduce its investigative role. As part of this process, the CPC was amended in 2012 to provide that the investigation of crimes by law enforcement officers and officials would be carried out by the State Bureau of Investigations. However, that body has not yet been established. Since the majority of the Maidan-related crimes were committed by law enforcement officials and officers and/or by their agents, the public prosecution service became the primary investigative body for Maidan-related crimes, at a time when its investigating capacity had been significantly reduced.

406. In addition, the fact that most of the suspects were law enforcement officers and officials meant that contemporaneous records held by the MoI and the SSU would have been key to establishing basic information concerning the law enforcement response to the protests. However, the evidence is that the policy of the former regime was not only to disperse the demonstrations unlawfully, but to do so in an undocumented manner.

[197] See paragraphs 382-383 above.
[198] For an outline of the comments of the CPT and of the CoE Commissioner for Human Rights as regards the absence of individual identifying marks on law enforcement uniforms, see IAP Information Note No. 14.
[199] See report "On human rights situation in Ukraine" of the OHCHR of 15 December 2014.

Accordingly, documents such as operational plans and deployment and firearms records were either not prepared by the MoI or the SSU, as required by law, or any such documents which were created were stolen or destroyed.

407. It must also be accepted that certain of the post-Maidan events[200] had a particular impact on the work of the investigative bodies, beyond the normal demands on those bodies. These included the annexation of Crimea, the events in Odesa on 2 May 2014, the conflict in the eastern regions from early April 2014 and the shooting down of the aircraft in the Donetsk region on 27 July 2014.

408. While allowance must be made for the significant challenges confronting those responsible for the Maidan investigations since 22 February 2014 and their impact on the investigations, the Panel considers it important to emphasise that these challenges cannot excuse any failings which did not inevitably flow from them.[201] The authorities of the present government clearly were, and are under, an obligation to take all reasonable steps to ensure that the investigations comply with Articles 2 and 3 of the Convention.

Conclusion

409. The challenges confronting those responsible for the Maidan investigations since 22 February 2014 have been significant and their impact on the investigations cannot be under-estimated. However, these challenges cannot excuse any failings which did not inevitably flow from them. The authorities of the present government clearly were, and are under, an obligation to take all reasonable steps to ensure that the investigations comply with Articles 2 and 3 of the Convention.

II. THE INVESTIGATIONS AFTER 22 FEBRUARY 2014: COMPLIANCE WITH ARTICLES 2 AND 3 OF THE CONVENTION

A. Independence

410. The Convention requires that, in order for investigations to be effective for the purposes of Articles 2 and 3, it must be ensured that the persons responsible for, and carrying out, the investigation are independent from those implicated in the events, both in law and in practice.[202] This means not only an absence of hierarchical or institutional connection but also a practical independence. What is at stake here is nothing less than public confidence in the State's monopoly on the use of force.[203] Supervision of the investigative acts by another authority may not constitute a sufficient safeguard when the investigation itself has, for all practical purposes, been conducted by police officers connected with those under investigation.[204]

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[200] See paragraphs 125-139 above.

[201] For example, *Al-Skeini and Others v. the United Kingdom*, cited above, § 164; *Mocanu and Others v. Romania*, cited above, § 319; and *Jaloud v. Netherlands*, cited above, § 186.

[202] See e.g. the *Güleç v. Turkey*, 27 July 1998, §§ 81-82, *Reports of Judgments and Decisions* 1998-IV; *Ergi v. Turkey*, 28 July 1998, §§ 83-84, *Reports of Judgments and Decisions* 1998-IV; *Öğur v. Turkey* [GC], application no. 21594/93, § 91, ECHR 1999-III; *Hugh Jordan v. the United Kingdom*, application no. 24746/94, § 106, ECHR 2001-III; *Nachova and Others v. Bulgaria*, cited above, § 112; *Boicenco v. Moldova*, application no. 41088/05, § 121, judgment of 11 July 2006; *Kolevi v. Bulgaria*, application no. 1108/02, § 193, judgment of 5 November 2009; and *Savitskyy v. Ukraine*, cited above, § 100.

[203] *Hugh Jordan v. the United Kingdom*, cited above, § 106, and *Giuliani and Gaggio v. Italy*, cited above, § 300.

[204] *Hugh Jordan v. the United Kingdom*, cited above, § 120; and *Ramsahai and Others v. the Netherlands*, cited above, § 337.

411. As regards structural matters, the Panel considers it important to note the numerous calls by various Council of Europe bodies to amend the current system of pre-trial investigations and, notably, to create an independent body for the investigation of complaints against law enforcement officers[205]. The widespread and serious violence committed by law enforcement officers against the participants in the Maidan demonstrations has highlighted the acute need for an effective and independent mechanism for the investigation of such crimes. While the current CPC provides for the establishment of the State Bureau of Investigations with the function of investigating crimes committed by state officials, judges and law enforcement officials, the Bureau is not yet functioning and the CPC requires only that it be set up by 2017.

412. As to the operational independence of the Maidan investigations, the Panel notes that crimes committed by law enforcement officers against participants of Maidan demonstrations currently fall within the investigative jurisdiction of the PGO. During those investigations, the PGO investigators have not only carried out investigative acts themselves but have also instructed operational units of the MoI to carry out specific investigative acts. Crimes allegedly committed by private individuals have been allocated to the investigative jurisdiction of the MoI. According to the PGO, when deciding on the investigative jurisdiction in respect of a criminal case and when instructing the MoI to carry out an internal enquiry or specific investigative acts, the PGO has always taken into consideration the possibility of a conflict of interest.

413. Despite this assurance, the Panel finds that there have been a number of deficiencies as regards the operational independence of the investigations of Maidan-related crimes.

414. The first example was raised by the PGO itself in a letter to the MoI dated 4 March 2014. The letter related to the main casefile 228 which concerned multiple episodes of deaths and injuries of Maidan protesters at the hands of law enforcement officers as well as the organisation of the violent suppression of Maidan demonstrations. The PGO complained in the letter about the fact that the investigative acts, relating to the identification of documents that had served as a basis for the distribution of weapons to the law enforcement officers and their use against protesters, had been entrusted to the very MoI officials who had been involved in the preparation of the documents related to use of such weapons against protesters during the Maidan events.[206]

415. The investigations of the ill-treatment of Mr Havryliuk provide a further example. The case was initially registered with the Holosiivskyi MoI Department of Kyiv and remained for more than a month within the investigative jurisdiction of that department before being transferred for pre-trial investigation to the public prosecution service. There was widespread media coverage of the Havryliuk incident, including on the Internet, and numerous witnesses were present during the incident. It was therefore clear from the outset that the victim had suffered ill-treatment at the hands of law enforcement officers deployed at Hrushevskoho Street. While it is true that the case was transferred after one month to the public prosecution service, the Panel notes that the early stages of an investigation are crucial for such matters as the collection of evidence and the identification of the persons involved and, more generally, for the outcome of the case. According to the European Court's caselaw, the subsequent involvement of an independent body cannot suffice to remove the taint of lack of independence of the body initially involved.[207]

416. In the Panel's opinion, the fact that the pre-trial investigation of certain crimes committed by titushky against the Maidan activists was allocated to the investigative

[205] See paragraphs 141-142 above and IAP Information Note No. 3, CoE comments on certain provisions of the CPC adopted in 2012
[206] Letter of the PGO to the MoI of 4 March 2014.
[207] *Ramsahai and Others v. the Netherlands*, cited above, § 340.

jurisdiction of the MoI constitutes another instance of a lack of operational independence in the investigations. The Panel notes the serious allegations that have existed from the outset as to the involvement of the former MoI leadership in engaging, supporting, organising and arming titushky for the purpose of intimidating and using violence against the Maidan participants. As recently as 2 February 2015, the Minister of the Interior publicly stated that irrefutable evidence had been obtained that the titushky were armed by former MoI officials. However, several cases in which titushky were the principal suspects such as those relating to the kidnapping and torture of Mr Lutsenko and the kidnapping and murder of Mr Verbytskyi were allocated to the jurisdiction of the MoI investigators, PGO prosecutors being confined to the carrying out of procedural supervision of the pre-trial investigations.

417. The PGO submitted to the Panel that it had detected no lack of impartiality in the MoI investigations of these cases and that, in any event, the prosecutors had played a sufficiently strong role in the process of investigations to be able to tackle any issue of lack of impartiality. The MoI representatives asserted that the investigations remained independent and this was supported by the results of the investigations and the fact that suspects had been identified.

418. However, the Panel reiterates that the supervision of investigations by another authority, however independent, is not a sufficient safeguard for the independence of the investigation.[208] It finds that allocating to the pre-trial investigative jurisdiction of the MoI cases concerning crimes allegedly committed by titushky, even under the procedural supervision of the public prosecution service, seriously undermined the independence of the investigations of such cases.

419. More generally, the Panel emphasises the importance in the present context, where the trust of the public in the criminal justice system is at stake, of the appearance of independence of the bodies with investigative responsibilities.[209] In this regard the Panel is concerned about certain appointments within the current leadership of the MoI, one of the main investigating authorities.[210] It appears that certain members of the current MoI leadership also held senior positions in the Ministry during the Maidan demonstrations, when, under the leadership of Mr Zakharchenko, the MoI sought to disperse the demonstrations through violence, intimidation, abusive prosecution and detention of protesters. Without making any findings as to the personal responsibility of any of the officials for the acts of violence, the Panel considers that their appointments contributed to the lack of appearance of independence and served to undermine public confidence in the readiness of the MoI to investigate the crimes committed during Maidan.

Conclusion

420. The Panel notes the numerous calls to introduce an independent and effective mechanism within Ukraine for investigations of crimes committed by law enforcement officers. The need for such a mechanism is highlighted by the crimes committed during the Maidan demonstrations.

The Panel concludes that, in certain important respects, the investigations into the Maidan cases lacked practical independence in circumstances where the investigating body belonged to the same authority as those under investigation. The Panel further considers that the appointment post-Maidan of certain officials to senior positions in the MoI contributed to the lack of

[208] *Hugh Jordan v. the United Kingdom*, cited above, § 120, *McKerr v. the United Kingdom*, application no. 28883/95, § 128, ECHR 2001-III; and *Ramsahai and Others v. the Netherlands*, cited above, § 337.
[209] *Bajic v. Croatia*, application no. 41108/10, § 102, judgment of 13 November 2012.
[210] See paragraphs 179-181 above.

appearance of independence and served to undermine public confidence in the readiness of the MoI to investigate the crimes committed during Maidan.

B. Effectiveness of the investigations

421. Articles 2 and 3 require that an investigation must effective in that it must be capable of leading to the identification and, if appropriate, punishment of those responsible[211]. This means, *inter alia*, that the authorities should take all reasonable steps to secure the evidence concerning the incident. The investigation should be broad enough to permit the investigating authorities to take into consideration not only the actions of the State agents who directly and unlawfully used lethal force, but also all the surrounding circumstances. Although this is an obligation of means and not result, any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the person responsible will risk falling foul of the required standard of effectiveness.

422. In particular, the investigation's conclusions must be based on a thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible. Nevertheless, the nature and degree of scrutiny required to satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work.

1. Staffing and resources in the PGO

423. The PGO staffing levels and changes since February 2014 are outlined above and are based on information supplied by the PGO[212].

424. The Panel considers that there were three key problematic areas in this respect.

425. In the first place, as noted above, in the absence of the State Investigation Bureau, the vast majority of the Maidan-related investigations fell to the PGO, a service whose investigation capacity had been reduced in line with legislative changes in recent years. Once it had taken on the Maidan investigations, the PGO began a three-month process of building up the investigative capacity of the MID of the PGO, which evidently delayed progress in the investigation. The PGO representatives described to the Panel how the resources of the MID had been increased, in particular, by the addition of investigation units and investigators to the MID[213]. However, such were the demands imposed by the complex financial crime cases concerning the former regime, that, according to Mr Horbatiuk[214], by September/October 2014 there were only three investigators working full time on Maidan cases who were required to carry far too great a burden. The Panel considers it evident that this level of staffing in the PGO for investigations of such complexity was wholly inadequate.

426. Secondly, Mr Bahanets, the Deputy Prosecutor charged with the Maidan investigations and with reinforcing the investigative capacity of the PGO from February to May 2014, confirmed that the reduction of the PGO investigative capacity in recent years had also meant that there were few investigators capable of investigating such complex cases. The Heaven's Hundred, an NGO which represented the next-of-kin of those killed during the Maidan demonstrations and which was in regular contact with the investigating authorities,

[211] See the General Principles and caselaw outlined above.
[212] See paragraphs 156-177 above**.**
[213] See paragraph 172 above**.**
[214] At the time, Head of the Second Investigating Unit of the Major Crimes Divisions of the MID of the PGO

was highly critical of the competence of the PGO and MoI investigators, considering that they were quite simply unable to carry out such complex investigations. The NGO provided to the Panel several telling examples. They also expressed a real concern that, once they had access to the investigation files, further delay would be caused by the need to make numerous requests for further investigative acts to be carried out. Amnesty International also considered that the absence of progress in the investigations could be explained, in part, by the lack of investigative skills and the lack of awareness of international investigative standards.

427. Thirdly, the high-level staff changes in the PGO since February 2014 have been a serious and recurring problem in the first 12 months of the investigations. Some senior staffing changes were inevitable in the immediate aftermath of Maidan, given the vote in the Verkhovna Rada of no-confidence in the former Prosecutor General and the later charges against him of illegally supressing the Maidan demonstrations. However, the Panel's concerns relate to the senior prosecuting personnel appointed *after* 22 February 2014.

428. Mr Makhnitskyi was appointed Acting Prosecutor General on 24 February 2014. Immediately after his detailed 3-month press briefing on 13 June 2014, he was dismissed by Presidential Decree[215]. The removal of the Prosecutor General within three months of the commencement of investigations of such importance and complexity required a particularly strong justification. No explanations for this removal were offered to the Panel. On 19 June 2014 Mr Yarema was appointed Prosecutor General and on 10 February 2015 the Verkhonva Rada approved his dismissal and appointed Mr Shokin as the new Prosecutor General. Mr Shokin was the third Prosecutor General to be appointed in a period of 12 months. In accepting his appointment, Mr Shokin is reported as saying that he had never been involved in the Maidan investigations and had no knowledge of them, but that he would inform himself as a matter of priority. The Panel considers that the appointment of three successive Prosecutors General in the first year of these investigations must have been detrimental to those investigations, from the standpoint both of their overall direction and the credibility of the authorities' response to the Maidan violence.

429. Mr Bahanets[216] was, as Deputy Prosecutor General and Head of the MID, the hands-on leader of the Maidan investigations. He was removed from those investigations by the Prosecutor General, Mr Yarema, on 25 August 2014 and transferred to another department within the PGO[217]. Mr Scherbyna was Mr Bahanets' subordinate, as Head and then Deputy Head of the MID. He received a redundancy notice on 11 September 2014, immediately following his meeting with the Panel, to take effect on 12 January 2015. Thus, six months into the management of the investigations, when the MID of the PGO was under considerable pressure and when continuity and leadership would have been vital, the two leaders of the Maidan investigations in the PGO were removed from the investigations within weeks of each other. No concerns or reservations had been expressed to either of them about their work and both considered that their removal had had a negative impact on the investigations[218]. The submissions of the PGO to the Panel contained no explanation for these senior staffing changes.

Mr Horbatiuk, now charged with the Maidan investigations, submitted to the Panel that Mr Scherbyna's redundancy was an artificial one: while his post had been abolished in

[215] Mr Makhnitskyi was then appointed as Advisor to the President, from which post he was dismissed on 5 February 2015.

[216] See paragraphs 164-165 above for a description of his experience and positions in the PGO.

[217] Head the Main Department for Law Enforcement in the Execution of Judgments in Criminal Proceedings and other Coercive Measures.

[218] According to Mr Makhnitskyi, the person replacing Mr Bahanets was junior, inexperienced (Deputy Head of a Department in a Regional Prosecutor's office who had no investigative experience) and not competent.

September, it was reinstated in December 2014, a practice which he confirmed had a long history within the PGO and was designed, in his view, to remove inconvenient people. Mr Bahanets and Mr Scherbyna linked their removal to the steps they were taking towards notifying certain Berkut officers of suspicion regarding the fatal shootings in Instytutska Street on 20 February. This suggestion has been examined by the Panel below in its assessment of that investigation. For present purposes, the Panel confines itself to recording that, even though both prosecutors were restored to the Maidan investigations in February 2015, the absence of the two leaders of the investigations for several months in 2014/2015 must have had a seriously adverse impact on the progress, quality and effectiveness of the investigations[219].

430. All save one of the senior prosecutors appointed to the MID of the PGO after 22 February 2014 appear to have been dismissed or removed from the Maidan investigations by October 2014[220]. There has therefore been an absence of continuity also at this level.

Conclusion

431. The Panel concludes that the number of PGO investigators involved in the Maidan investigations during 2014 was wholly inadequate.

The Panel further concludes that there was, in addition, an absence of continuity at senior prosecutor level in the PGO in three respects. The appointment of three successive Prosecutors General in the first 12 months of these investigations must have been detrimental to the investigations, from the standpoint both of their overall direction and the credibility of the authorities' response to the Maidan violence. The removal from the Maidan investigations of the two leaders of those investigations must have had a seriously adverse impact on the progress, quality and effectiveness of investigations. All save one of the senior prosecutors appointed to the MID of the PGO after 22 February 2014 appear to have been dismissed or removed from the Department by October 2014.

2. Allocation of the investigative work

432. The Panel considered the division of labour between the PGO and the Kyiv City Prosecutor's Office to have been excessively complex, with both offices investigating the same events from different angles. For instance, files concerning the alleged theft by Berkut officers of firearms for use on 20 February[221] were allocated to the City office, whereas the issue of firearms for use by Berkut officers on that date was central to the PGO casefile 228. Investigations concerning the unjustified detention of and judgments against protesters[222], which were also allocated to the City office, do not appear to be distinguishable from the main investigation into the abusive detention and prosecution of protesters, which was allocated to the PGO[223].

433. Moreover, it does not appear that the PGO exercised any effective supervision over the City office's investigations. It was not until late October 2014 that an important investigation, concerning hundreds of persons injured on 18-20 February, was re-transferred

[219] See e.g. *Al Nashiri v. Poland*, application no. 28761/11, § 493, judgment of 24 July 2014.
[220] See paragraph 167 above.
[221] Casefiles no. 42014100000000201 and no. 42014100000000225.
[222] Casefile no. 42014100000000230.
[223] Casefile no. 4214100070000020. In its Preliminary Observations on its visit to Ukraine published in January 2015, the CPT also highlighted similar problems as regards the allocation of investigations.

from the City office to the PGO. Mr Horbatiuk confirmed to the Panel that this was because of a lack of investigative activity on the part of the City office. Further, it appears that, prior to October 2014, progress in the AutoMaidan cases with the City office was slow. The AutoMaidan cases were not particularly complex and did not, for example, give rise of the identification issues which had plagued other investigations. However, it was only after an AutoMaidan protest outside the PGO's office on 22 October 2014 that the investigation with the City office appears to have begun to make any progress and the first detailed information on these cases was not received by the Panel until December 2014.

434. The allocation of certain casefiles between the PGO and the MoI similarly does not appear to have been coherent or efficient. The first relevant example is the investigation of the activities of titushky. The broad titushky investigation (the alleged engagement by MoI officials of titushky and the latter's actions, including the death of Mr Veremii) is being investigated by the PGO, whereas one incident in which titushky are suspects (the Lutsenko/Verbytskyi crime), is being investigated by the MoI. Quite apart from the issues of independence attached to the fact that the MoI is investigating the Lutsenko/Verbytskyi incident outlined above[224], there is a clear overlap, in both evidence and suspects, between the two investigations. Indeed, one of the titushky has been publicly identified by the MoI on numerous occasions as central to the organisation of the unlawful activities of titushky: but he has been notified of suspicion in the MoI casefile alone and not within the broader titushky casefile of the PGO.

435. The treatment of the investigation into the deaths and injuries of law enforcement officers has also been of concern to the Panel. In February 2014 the PGO took charge of this investigation. In June 2014 it was assigned to the MoI. Quite apart from whether it was appropriate that MoI law enforcement officers should investigate deaths and injuries of colleagues, without any apparent attempt to ensure a structural separation between the investigators and the victims, the Panel has not been informed of any progress in the MoI investigations. In December 2014 the investigation was re-transferred to the PGO[225], but, it appears, only as regards the deaths and not the injuries of law enforcement officers.

Conclusion

436. The Panel did not consider the allocation of investigative work between the PGO, on the one hand, and the Kyiv City Prosecutor's Office and the MoI, on the other, to be coherent or efficient. Nor did the Panel find the PGO's supervision of the investigative work of the Kyiv City Prosecutor's Office to have been effective.

3. MoI and SSU co-operation with the PGO

437. As explained above[226], the fullest co-operation and coordination between the PGO, the MoI and the SSU was crucial for the effectiveness of the Maidan investigations. However, the evidence before the Panel points to a distinct lack of co-operation with the PGO investigations on the part of the MoI and the SSU.

[224] See paragraph 416 above.
[225] To the newly established SID of the PGO.
[226] See paragraph 205 above.

(a) Lack of co-operation by the MoI

438. From an early stage, the PGO made a number of serious complaints, both in public statements and before the Panel, about a lack of co-operation on the part of the MoI, which the PGO argued bordered at times on obstructiveness. In letters to the MoI dated 1 and 4 March 2014, the PGO complained about the inadequate responses of the MoI to PGO investigative requests. The PGO letter of 12 June 2014 criticised the "dangerous tendency" in the MoI not to respond to PGO requests concerning investigations against law enforcement officers, a tendency which had become worse since the arrest of the three Berkut officers in early April 2014. In his press conference of 13 June 2014, the then Prosecutor General, Mr Makhnitskyi, referred to an "informal and hidden opposition" to the investigations exerted by officials of the MoI, a position he again emphasised to the Panel in November 2014.

The MoI denied these allegations when the Panel raised them during the meetings of September and November 2014. The MoI maintained that it had responded properly to all PGO requests, including supplying all requested information to the extent that it was available. The former regime had made sure that their activities were not documented, with the result that the MoI did not have all deployment information. Any weapons used by Berkut officers were used illegally and the MoI had been unable to trace the weapons. The MoI representatives stated to the Panel that they had no information either as to the distribution of weapons to Berkut officers or as to the alleged sending of Berkut officers with their weapons to the anti-terrorist operation in the eastern regions. The MoI also referred to the difficulties caused by the replacement of the majority of the senior MoI officials after Maidan and to certain operational difficulties that were said to have hindered the investigative process.

439. Despite these explanations on the part of the MoI, there remained serious points of concern for the Panel as regards the MoI's co-operation with the PGO investigations.

440. In the first place, on 24 February 2014 Mr Makhnitskyi announced to the Verkhovna Rada that he had already requested the MoI to furnish detailed information and documentation relating to the deployment of law enforcement officers involved in public order activities, including documentation concerning the issue of weapons. While it seems to have been accepted that few deployment or operational planning records had been created or retained prior to 22 February, the PGO complained to the Panel about the failure of the MoI thereafter to co-operate in reconstituting the planning, deployment and operations information, which information was crucial to the investigation when law enforcement officers carried no individual markings.

441. Secondly, most of the serious crimes were allegedly committed by, or with the acquiescence of, MoI law enforcement officers. Internal inquiries by the MoI were therefore the first step in establishing basic operational matters, such as mission planning, deployment and the issue of firearms, as well as any acts of wrongdoing.

However, in both their contemporaneous letters to the MoI and directly to the Panel, the PGO complained about the lack of internal inquiries and about the delay and quality of the reports received. This meant, the PGO submitted, that it was required to establish basic information through time-consuming and detailed investigative work; it added that certain internal information could not be retrieved through this external process.

Three internal inquiry reports in particular were a cause for concern. The report sent to the PGO on 30 January 2014, which covered the events of the early morning of 30 November, failed to identify any of the 30 or so Berkut officers whom it was considered had been involved. In addition, in its letter to the MoI of 12 June, the PGO criticised the main Maidan-related internal inquiry of the MoI dated 24 April 2014 as being both inadequate and belated: it did not cover the activities of Mr Zakharenko or of a number of senior MoI officials; it did not establish the circumstances in which Berkut weapons and related documents had

disappeared; and it had not been delivered to the PGO until 24 May 2014. The Panel has seen this report and considers the PGO criticisms to be justified. It also notes that the MoI letter of 13 July 2014 in response to the PGO did not address these complaints. The Panel has also been furnished with the MoI internal inquiry reports concerning Mr Sadovnyk's escape from house arrest. It agrees with the PGO that they do not address the key issues. This incident constituted one of the most serious setbacks to the investigation. However, the first internal inquiry report failed to treat as problematic the fact that the MoI surveillance officer had waited all day (from 7:00 a.m. to 11:00 p.m.) to check *in situ* the cause of the alarm signal, thereby leaving Mr Sadovnyk a 15-hour start on those searching for him. The second report merely recorded the administrative formalities completed by the MoI officers charged with supervising Mr Sadovnyk's home arrest.

442. Thirdly, the PGO complained, in its letters to the MoI and to the Panel, about the failure by the operational units of the MoI to carry out investigative acts in time, adequately or at all. The PGO letters to the MoI between March and June 2014 contain a series of detailed and serious complaints in this respect. The PGO letter of 12 June 2014 drew attention to the fact that the MoI had still not provided responses as to the location of Berkut officers since 20 February or as to the circumstances of the disappearance of Berkut firearms. The letter noted, for example, that no comprehensive analysis of the mobile phones of Berkut officers had been carried out to establish their deployment and movements. The PGO letter noted that the MoI had gone so far as to state that they had not been able to find a single witness who had seen a Berkut officer firing from the concrete barricades, even though there was extensive footage on the Internet showing this to have occurred, openly and over a period of time. The Prosecutor General, in his press conference on 13 June 2014, reiterated these criticisms. In its response 13 July 2014, the MoI did not address these particular criticisms by the PGO.

443. Fourthly, as noted above, the PGO had been questioning or seeking to question MoI law enforcement officers, including former Berkut officers. In its letter to the PGO of 12 May 2014, the MoI sought to dissuade the PGO from doing so, citing the need to maintain a good moral and psychological climate within the MoI units which were dealing with the armed aggression on Ukraine: the MoI proposed considering the initiation of legislation to release those officers from responsibility for their Maidan-related actions unless they had committed "a grievous or an especially grievous offence". The PGO letter of 12 June 2014 criticised the fact that the MoI had transferred certain former Berkut officers, with their weapons, to participate in the anti-terrorist operation in the eastern regions without PGO approval and in order to conceal material evidence. At his press conference on 13 June 2014, Mr Makhnitskyi reiterated these latter complaints, referring to the Minister's letter of 12 May, and underlined that this attitude of the MoI had greatly complicated the possibility of obtaining good and early results in the investigations. The MoI published a press release on the same day to the effect that the Berkut officers were required for the anti-terrorist operation in the eastern regions and that none had been charged by the PGO with crimes. There were, in the view of the MoI, no grounds to accuse the MoI of hindering the investigations.

444. The Panel has noted that the PGO complaints about a lack of MoI co-operation, and about its impact on the effectiveness of the investigations, are serious and have been made consistently and in a detailed manner since March 2014 in public, to the MoI itself and to the Panel. The MoI responses, to the PGO and to the Panel, have been both brief and general. The Panel was particularly struck by the contents of the MoI letter of 12 May 2014 and by the subsequent failure of the MoI to address the specific criticisms in the PGO's letter of 12 June 2014. That being said, the Panel is not convinced that the PGO took all necessary steps to follow-up on these failures in order to ensure effective co-operation by the MoI in the investigations.

Conclusion

445. Co-operation by the MoI was crucial to the effectiveness of the PGO investigations. The Panel concludes that there are strong grounds to believe that the MoI attitude to the PGO has been unco-operative and, in certain respects, obstructive. While the PGO complained to the MoI, the Panel considers that not all necessary steps were taken by the PGO to ensure effective co-operation by the MoI in the investigations.

It further concludes that there are strong grounds to believe that this attitude of the MoI has had a seriously negative impact on the investigations. The illustrative example, detailed below, of the PGO attempts to question and arrest Berkut officers, serves to confirm this finding.

(b) Lack of co-operation by the SSU

446. In its initial submissions to the Panel, the PGO did not refer to the question of co-operation by the SSU. However, in its October submissions, the PGO claimed that the SSU had been unco-operative and stressed that the additional investigative work that this had entailed had considerably protracted matters and had had a negative impact on the effectiveness of the investigations. The Chief of the SSU claimed, on the other hand, that, while the priority of the SSU had been to find and arrest three former SSU Generals, they had given full co-operation to the PGO, by arresting the 16 Berkut officers in April 2014, carrying out various investigative acts and searching for missing persons.

447. The Panel heard detailed submissions from the PGO as to a lack of documentation and information from the SSU. The PGO considered that, even if SSU documents had been burned or stolen before 22 February, the SSU should have been more co-operative in piecing together the information contained in those documents, particularly as regards the counter-Maidan operations (Boomerang) which had been devised by the SSU. While the Chief of the SSU confirmed to the Panel in December 2014 that all SSU documents were missing[227], in the press conference of 3 April 2014 he had asserted not only that documents had been recovered in a recent secret mission to Simferopol, but that the SSU had established the plans, orders and actors involved in its counter-Maidan operations, which information had been sent to the PGO. However, the Deputy Prosecutor General charged with the Maidan investigations until August 2014, Mr Bahanets, informed the Panel that the secret SSU mission had not brought back any Maidan-related material. Either the Chief of the SSU was mistaken about a key issue or the PGO was not provided with important SSU information. It appears that two internal inquiries relating to the counter-Maidan operation were produced by the SSU. Although the Panel was refused access to the inquiry reports on the ground that they were classified as secret, the GPO informed the Panel that the internal investigations had not been conducted properly and that the reports had not in any event addressed the key issues.

448. In the press conference of 3 April 2014 the Chief of the SSU had also addressed the question of the FSB infiltration of the former SSU and he informed the Panel that he had been shocked by the level of that infiltration. However, the PGO submitted that it had not been provided with any of this information or with an adequate SSU internal inquiry, without which it had not been possible to conduct a meaningful investigation into FSB involvement in the Maidan shootings.

[227] The Chief of the SSU informed the Panel that, when he entered the SSU premises on 24 February 2014, there was nothing left as most records, including operational and staff files, had either been burned (burning remains of documents were still on the SSU premises) or had been taken by the former SSU Chief and staff before they absconded. The SSU had, he submitted, to start from scratch.

449. As to the question of SSU weapons, the Chief of the SSU affirmed, in the same press conference, that state-of-the-art special purpose weapons had been taken to Simferopol and, in his evidence to the Panel in November 2014, that SSU Blaser sniper weapons had disappeared. However, the PGO representatives informed the Panel that they had never been made aware of the fact that SSU Blaser sniper weapons were missing. Again, either the Chief of the SSU was mistaken about a key issue or the PGO had not been provided with crucial information. As outlined above[228], SSU officers were heavily armed and active in the context of its counter-Maidan operation. According to the PGO, the investigations had not been able to obtain any material evidence linking the SSU Alpha troops to any shootings. Had it emerged that a number of SSU sniper rifles had disappeared, that would have been vital information for the PGO's investigations of sniper shootings which, for the moment, have proved inconclusive.

450. That being said, the Panel was left with the impression of a certain reticence on the part of the PGO to investigate thoroughly the possible responsibility of the SSU at an operational level. Nor, in contrast to its dealings with the MoI, did the PGO appear to have complained to the SSU about an alleged lack of co-operation with its investigation. In particular, as noted above, despite finding what were claimed to be deficiencies in the two internal inquiries carried out by the SSU, the PGO appears to have taken no steps to follow-up the matter with the SSU or to require the alleged deficiencies to be rectified or the reports to be supplemented.

Conclusion

451. SSU co-operation was also important to the effectiveness of the PGO investigations. While the Panel has noted a reticence on the part of the PGO to investigate thoroughly the possible responsibility of the SSU at an operational level, it considers that the above elements provide grounds to believe that the SSU failed adequately to co-operate with the PGO and that this had a negative impact on the investigations into the counter-Maidan operation of the SSU.

4. The role of the courts

452. The national courts also carry a responsibility under the procedural requirements of Articles 2 and 3 of the Convention and this includes the pre-trial investigation phase.

453. In particular, the conduct of criminal proceedings as a whole, including at the pre-trial and trial stage, must satisfy the requirements of the positive obligation to protect lives and prevent ill-treatment. National courts should not under any circumstances be prepared to allow life endangering offences and grave attacks on physical and moral integrity to go unpunished[229]. This is essential for maintaining public confidence, ensuring adherence to the rule of law and preventing any appearance of tolerance of, or collusion in, unlawful acts[230] Thus, the European Court has affirmed on numerous occasions that imposing an inadequate sentence for such serious crimes as intentional killing or torture, inhuman or degrading

[228] See paragraph 238 above.

[229] See *Salman v. Turkey* [GC], application no. 21986/93, §§ 104-109, ECHR 2000-VII; *Okkalı v. Turkey*, application no. 52067/99, § 65, ECHR 2006-XII; and *Yeter v. Turkey*, application no. 33750/03, § 63, judgment of 13 January 2009.

[230] See, *mutatis mutandis*, *Öneryıldız v. Turkey* [GC], application no. 48939/99, § 96, ECHR 2004-XII; *Okkalı v. Turkey*, cited above, § 65; *Türkmen v. Turkey*, application no. 43124/98, § 51, judgment of 19 December 2006; and *Fadime and Turan Karabulut v. Turkey*, application no. 23872/04, § 45, judgment of 27 May 2010.

treatment or punishment will send a wrong message to the society and foster a sense of impunity for the perpetrators, rather than ensuring a dissuasive effect and conveying the State's intolerance for such acts[231].

454. It follows that, while the European Court grants substantial deference to the national courts in the choice of appropriate sanctions for ill-treatment and killing by State agents, at the same time it exercises a certain power of review and intervenes in cases of manifest disproportion between the gravity of the act and the punishment imposed. Were it to be otherwise, a State's duty to carry out an effective investigation would lose much of its meaning, and the right enshrined by Article 2, despite its fundamental importance, would be ineffective in practice[232].

455. The Panel has applied these principles in assessing the actions of the national courts, including in cases of alleged serious ill-treatment. It reiterates however that it was not its task to pronounce on violations of the Convention in an individual case.

456. Certain PGO representatives expressed to the Panel general concerns about the handling of Maidan-related cases by the national courts. The former Prosecutor General, Mr Makhnitskyi, described the early investigation as involving a struggle to overcome obstacles, of which the courts were just one: in response to various requests to seize assets or detain persons, he stated that "they operated as they had done under the previous regime". Representatives of the PGO complained to the Panel, giving examples, about unnecessary delays before the courts[233]. As noted above, certain PGO representatives also complained that the courts were used, in particular, by Berkut officers with the blessing of their superiors, as platforms for intimidation of the court, the prosecution, victims and next-of-kin, a phenomenon that did not seem to have been addressed by the courts in question. A PGO representative pointed out to the Panel that large groups of Berkut officers had, with the knowledge of the MoI leadership, been bussed to court hearings concerning a Berkut officer for intimidation purposes. Senior PGO personnel later confirmed this. Mr Yarema, during a press conference in December 2014, referred to an episode in one of Mr Sadovnyk's hearings where plain clothes Berkut officers intimidated victims: he had raised this with the Minister of the Interior, Mr Avakov, who had responded that there had been no breaches of the law[234].

457. When reviewing the progress of the Maidan investigations, the Panel was particularly struck by a number of key decisions of the Kyiv Pecherskyi District Court, the competent court for many Maidan-related criminal proceedings, which had had seriously negative consequences for the investigation, even where those decisions were subsequently reversed on appeal.

(a) Decisions concerning the violence in the early morning of 30 November 2013

458. The Panel notes that the only high-ranking officials who were notified of suspicion of crimes connected to the violence at Maidan in the early morning of 30 November were

[231] *Okkalı v. Turkey*, cited above, §§ 73-75; *Nikolova and Velichkova v. Bulgaria*, application no. 7888/03, § 63, judgment of 20 December 2007; *Gäfgen v. Germany* [GC], application no. 22978/05, §§ 123 and 124, ECHR-2010; *Enukidze and Girgvliani v. Georgia*, application no. 25091/07, § 274, judgment of 26 April 2011; and *Aleksakhin v Ukraine*, cited above, § 58.

[232] *Nikolova and Velickova v. Bulgaria*, cited above, § 62.

[233] For example, the PGO investigators obtained a Russian mobile phone and applied to the investigating judge to obtain information about the communications which had taken place on the phone. They obtained a hearing three weeks after their request and it took three more weeks to receive the information from the telecommunication provider. They submitted that such matters generally take a matter of days.

[234] In an interview published on 23 January 2015 in *Ukrainska Pravda*, the Head of the newly established SID of the PGO, Mr Horbatiuk, confirmed that the Berkut officers appearing at Mr Sadovnyk's hearing had shouted "Glory to Berkut" and considered that this had not taken place without the knowledge of their superior officers.

granted an amnesty by the Pecherskyi District Court. While this decision was later overturned on appeal on the grounds of a failure properly to apply the Amnesty Law and the case was remitted to the Pecherskyi District Court, the proceedings against all but one of the suspects[235] have effectively been deadlocked since then on amnesty-related issues.

(b) Decisions in Mykhailo Havryliuk's case

459. The only cases concerning Maidan-related violence by law enforcement officers to have come to trial so far were those before the Pecherskyi District court concerning the serious violence and humiliation inflicted on a detained protester, Mr Havryliuk.

460. The two cases concerning abuse of office resulted in the imposition of the minimum sentence allowed by the relevant Articles of the CC, which sentence was also suspended. The case concerning neglect of duty by one superior officer and the recording of the humiliating incident, resulted in the release of the accused from criminal responsibility and the termination of the criminal proceedings. The second case against a superior officer ended with the imposition of a suspended sentence. Thus, despite findings and admissions of guilt of serious crimes, no law enforcement officer has served any prison sentence and, if the exclusion orders against the two servicemen convicted of abuse of power were fully applied, they would return to service in the coming months.

461. The Panel notes that these are the only Maidan-related convictions to date and a number of factors point to these sentences as being wholly inadequate. In the first place, the incident, which is described above in some detail[236], concerned serious and humiliating violent acts inflicted on a defenceless detainee by numerous law enforcement officers, which were ignored by several superior officers present at the scene. Secondly, footage of the incident immediately appeared on the Internet, leading to widespread coverage in national and international media. The case became one of the emblematic cases of police brutality and stirred outrage in Ukrainian society. Thirdly, in reaching its findings and attaching overriding importance to the reconciliation between the assailants and the victim, the court did not address the aggravating circumstances of the incident, namely, its severity, its humiliating character and the fact that it was carried out, almost casually, by numerous law enforcement officers, who not only violated their primary duty of protecting those in their custody, but did so evidently endowed with a clear sense of impunity.

462. Even taking into account the substantial deference that must be accorded to the choice by national courts of the appropriate sanctions for ill-treatment by State agents, the Panel considers that there was a manifest disproportion between the gravity of the act and the punishment imposed. In so doing, the criminal proceedings lost much of their meaning, the absolute prohibition of ill-treatment by Article 3 was ineffective in practice and the deterrent effect of the judicial system in place was undermined.

(c) Decisions leading to the release of Mr Sadovnyk, a former Berkut commander

463. As detailed above, on 18 September 2014 the Pecherskyi District Court (Judge Volkova) renewed the pre-trial detention of two junior Berkut officers but, on the following day, released to home arrest their commander (Mr Sadovnyk), who had been notified of suspicion of 39 murders. If there was a distinction to be drawn between Mr Sadovnyk and his two junior officers, it was that the case against him, as the commander of the unit, was the more serious. Since his pre-trial detention had already been extended until 27 September, there was no legal reason to order, as the court did, his immediate release. Although the first

[235] See paragraphs 218-219 above.
[236] See paragraph 61 above.

instance decision was later overturned on appeal, Mr Sadovnyk had by then absconded and the prosecuting authorities had thereby lost their most important suspect in numerous Maidan-related killings, as well as a key evidential link between the Berkut command and the Berkut unit which had allegedly been responsible for the deaths of numerous protesters on 20 February 2014.

464. Judge Volkova has since been notified of suspicion of making a deliberately unjust ruling. In mid-February the new Prosecutor General, Mr Shokin, sought the approval of the Verkhonva Rada to arrest three further judges of the Pecherskyi District Court.

Conclusion

465. The Panel concludes that the decisions of the Pecherskyi District Court, the main court of jurisdiction in many Maidan-related proceedings, failed to comply with the requirements of Articles 2 and 3 of the Convention, undermined aspects of the effectiveness of the Maidan investigations and, more generally, weakened the deterrent effect of the judicial system in place.

5. The investigation of Berkut officers – an illustrative example

466. The multiple fatal shootings in Instytutska Street on 20 February were the most serious episode in the three months of Maidan-related violence. In the Panel's opinion, the investigation into that incident demonstrates serious instances of a lack of co-operation and obstructiveness that appear to have been symptomatic of the difficulties encountered by the PGO in investigating wrong-doing by law enforcement officers.

467. As noted above, the PGO investigation found evidence relatively quickly to the effect that a Berkut unit had killed 39 protesters with AKS 7.62 mm calibre weapons on 20 February 2104. The main investigative challenge for the PGO was to identify, without effective co-operation from the MoI, the unit concerned and those responsible for the shooting. The Panel has highlighted above the PGO investigations which allowed it to identify the relevant Berkut unit and the involvement of at least 16 officers of that unit.

468. The detailed account at paragraphs 264-270 above, about the subsequent attempts to summon and question Berkut officers, is based on the oral submissions to the Panel in December 2014 of Mr Bahanets and his subordinate Mr Scherbyna. They were the PGO prosecutors leading the Maidan-related investigations at the time and their submissions were not contested by Mr Horbatiuk, who was present at the same meeting. While their account was received by the Panel after its last meeting with the MoI, the Panel found it to be coherent, plausible and consistent with other submissions to it.

469. In the view of the Panel, the events in April 2014 demonstrated an alarming sense of impunity on the part of the Berkut officers and, an incapacity or unwillingness on the part of their MoI superiors to ensure that those officers co-operated with a lawful investigation. The Berkut officers failed to answer the PGO summons. A Berkut commander considered that he could negotiate with the PGO over which officer would answer a PGO summons and then subsequently interfered with the questioning of the officers. Berkut officers went so far as to try to obtain the release of the arrested Berkut officers through the physical intimidation of PGO staff, by surrounding the building in which they were being questioned.

470. Equally disturbing is the allegation that phone records of a Berkut officer, who was willing to speak to the PGO, had been tampered with to exclude a phone call which would have compromised his MoI superiors[237].

[237] See paragraph 269 above.

471. The Panel also finds Mr Sadovnyk's escape to be as worrying as it was unnecessary. The first instance decision was, unsurprisingly, overturned on appeal and criminal proceedings have been issued against the relevant trial judge. The MoI operational units did not carry out any adequate surveillance of the suspect's home arrest pending the appeal, as had previously been successfully done when Mr Sadovnyk had been released by the Pecherskyi District Court in April 2014. The MoI supervising officers then reacted with unacceptable delay to the breach of his home arrest conditions, allowing him 15 hours to make his escape. The Panel considers persuasive the PGO suggestion that Mr Sadovnyk's escape and disappearance was planned and required considerable financial and other resources, which would not have been available to the accused himself. The evidence given to the Panel by PGO representatives, as well as by Messrs Makhnitskyi, Bahanets and Scherbyna, clearly pointed to persons within the MoI as having organised Mr Sadovnyk's escape. If true, this is one of the most serious allegations of obstruction made to the Panel, relating as it does to the loss of the key witness in the gravest of the violent incidents at Maidan.

472. The submissions to the Panel about the later attempts to notify of suspicion additional Berkut officers are similarly disturbing and reveal important differences of opinion between the current and former representatives of the PGO with whom the Panel spoke.

473. On the one hand, Messrs Makhnitskyi, Bahanets and Scherbyna were clear: the evidence was such that they had been ready, by June/July 2014, to notify those additional officers of suspicion. Mr Bahanets and Mr Scherbyna essentially claimed that, once Mr Bahanets had informed the then Prosecutor General of this fact, the relevant Berkut officers absconded from the jurisdiction, all leaving on the same day. Both clearly linked their later removal from the Maidan investigations to their ongoing efforts to pursue those Berkut officers.

474. On the other hand, the submissions of the representatives of the PGO who met with the Panel in November were different: they maintained that there was at that time still insufficient evidence to notify those additional Berkut officers, that the investigation was continuing and that between eight and 12 of the relevant Berkut officers were still within the jurisdiction.

475. The Panel is unable definitively to establish the truth of such grave and serious allegations directed at the then Prosecutor General, Mr Yarema, and the MoI.

In so far as they are directed against the MoI, the Panel would confine itself to noting that the allegations are consistent with similarly serious allegations of a lack of co-operation with, and even obstruction of, the investigations on the part of the MoI. That being said, the Panel observes that the PGO did not take adequate legal steps to address such obstruction.

In so far as they are directed against Mr Yarema, it might be argued that the submissions of Messrs Makhnitskyy, Bahanets and Scherbyna were motivated by their resentment at having been removed from the Maidan investigations or dismissed from the PGO. However, even if so motivated, that would not, of itself, justify the rejection of their accounts, which the Panel found to be clear, detailed and coherent. Three of the most important prosecutors in the Maidan investigations until early September 2014 agreed that by June or July 2014 there was sufficient evidence to notify additional Berkut officers of suspicion and attempts had been made during the summer to do so. Messrs Bahanets and Scherbyna were clear about their wish to pursue those Berkut officers and they were removed from the Maidan investigations at a crucial point in those investigations and for reasons which, as noted above, have not been explained to the Panel and which are difficult to understand.

476. In this regard, the Panel has taken note of recent developments in February 2015. Once the new Prosecutor General was appointed in February 2014, Messrs Bahanets and Scherbyna were both re-appointed to the Maidan investigations and, on 23 February 2015,

20 Berkut officers were notified of suspicion on charges associated with the shootings on Instytutska Street on 20 February 2014. However, by that date, 18 of those Berkut officers had absconded and only two could be arrested.

Conclusion

477. The Panel considers that this example, relating as it does to the most serious episode of Maidan-related violence, is illustrative of a lack of co-operation and obstruction by the MoI which seriously impeded progress in this key investigation.

The Panel also has serious concerns about the failure to notify additional Berkut officers of suspicion during the mandate of Mr Yarema, the then Prosecutor General.

6. Amnesty

478. On several occasions since February 2014 the authorities have made public statements suggesting the possibility of an amnesty for law enforcement officers who had been involved in the Maidan events. The Panel has outlined these statements above[238]. The most striking example is the letter of 12 May 2014 to the PGO in which Mr Avakov proposed considering the initiation of legislation which would release from criminal responsibility those law enforcement officers who had performed their duties during the Maidan protests and in respect of whom there was no indisputable evidence of the commission of "a grievous or especially grievous crime".

479. The European Court has affirmed that granting an amnesty in respect of the killing and ill-treatment of civilians would run contrary to a State's obligations under Articles 2 and 3 of the Convention since it would hamper the investigation of such acts and necessarily lead to impunity for those responsible. Such a result would diminish the purpose of the protection of Articles 2 and 3 of the Convention and render illusory the guarantees in respect of an individual's right to life and the right not to be ill-treated[239].

480. The European Court has also held that neither amnesties nor pardons should be tolerated in cases concerning unlawful killing or ill-treatment inflicted by State agents.[240] It is considered that when an agent of the State, in particular a law enforcement officer, is convicted of a crime that violates Articles 2 and/or 3 of the Convention, the granting of an amnesty or pardon can scarcely serve the purpose of an adequate punishment. On the contrary, the European Court expects States to be all the more stringent when punishing their own law enforcement officers for the commission of such serious life endangering crimes than they are with ordinary offenders, since what is at stake is not only the individual criminal-law liability of the perpetrators but also the State's duty to combat the sense of impunity which the offenders may consider they enjoy by virtue of their office and to maintain public confidence in and respect for the law enforcement system.[241]

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[238] See paragraphs 385-388 above as regards the impunity of law enforcement officers.

[239] See *Abdülsamet Yaman v. Turkey*, application no. 32446/96, § 55, judgment of 2 November 2004; *Yeter v. Turkey*, cited above, § 70; *Association "21 December 1989" and Others v. Romania*, cited above, § 144; *Marguš v. Croatia* [GC], application no. 4455/10, § 127, judgment of 27 May 2014; and *Mocanu and Others v. Romania*, cited above, § 326.

[240] *Aleksakhin v. Ukraine*, cited above, § 58; and *Mocanu and Others v. Romania*, cited above, § 326.

[241] *Enukidze and Girgvliani v. Georgia*, cited above, §§ 273-274. The European Court was struck by the fact that the President of Georgia had pardoned State agents for a serious crime (deliberately killing a man) by reducing their sentence in half, following which the prison authorities requested, and the courts granted, early release to the State agents.

481. The Panel is not aware of any amnesty or pardon having been granted to law enforcement officers deployed on public order duties during the Maidan demonstrations. However, the Panel notes with concern the above-noted statements of high-ranking State officials about possible amnesties or pardons of law enforcement officers and underlines that granting such amnesties or pardons would run counter to the State's obligations under Articles 2 and 3 of the Convention and, more particularly, to its obligation to enforce the criminal law, to combat impunity and to maintain the confidence of the public in its law enforcement system.

Conclusion

482. The Panel would stress that the grant of amnesties or pardons to law enforcement officers in relation to unlawful killings or acts of ill-treatment would be incompatible with Ukraine's obligations under Articles 2 and 3 of the Convention.

C. Promptness, reasonable expedition

483. A requirement of promptness and of reasonable expedition is implicit in the context of the effectiveness of investigations, principles which have been applied by the European Court in cases against Ukraine[242].

484. While there may be obstacles or difficulties which prevent the progress of an investigation in a particular situation, a prompt response by the authorities to investigate a use of lethal force or an allegation of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in, or tolerance of, unlawful acts.[243]

485. The prompt opening of an investigation into credible allegations of a crime, followed by its active pursuit, is key to an effective investigation.[244] In cases of deaths in contentious situations, it is crucial that an investigation be prompt since the passage of time will inevitably erode the amount and quality of the evidence available to form the basis of the investigation.[245] Once promptly commenced, the investigation must be pursued with reasonable expedition.[246]

486. The Panel has already concluded that the lack of any genuine investigations during the first three months of the demonstrations inevitably meant that the investigations did not begin promptly and that this constituted, of itself, a substantial challenge to the effectiveness of the investigations which took place thereafter.[247]

487. The Panel has also concluded that the investigations have been marked with serious deficiencies and it considers that those deficiencies have significantly protracted the investigative response to the violent events during the Maidan demonstrations.

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[242] See *Myronenko v. Ukraine*, application no. 15938/02, §§ 36-37, judgment of 18 February 2010; *Kachurka v. Ukraine*, application no. 4737/06, §§ 53-57, judgment of 15 September 2011; and *Danilov v. Ukraine*, cited above, § 70.

[243] *Hugh Jordan v. the United Kingdom*, cited above, § 108.

[244] See *Isayeva, Yusupova and Bazayeva v. Russia*, applications nos. 57947/00, 57948/00 and 57949/00, § 218, judgment of 24 February 2005; and *Khashiyev and Akayeva v. Russia*, applications nos. 57942/00 and 57945/00, § 157, judgment of 24 February 2005.

[245] See *Trubnikov v. Russia*, application no. 49790/99, § 92, judgment of 5 July 2005; and *Jasinskis v. Latvia*, application no. 45744/08, § 79, judgment of 21 December 2010.

[246] *McCaughey and Others v. the United Kingdom*, application no. 43098/09, § 130, judgment of 16 July 2013.

[247] See paragraph 401 above.

488. It is not the Panel's role to reach a conclusion as to whether delays in the investigation of a particular case were incompatible with Articles 2 and 3 of the Convention. Nevertheless, the Panel records that it received submissions as regards particular delays from Amnesty International[248]. Most concerned the delayed completion of medical expert examinations or delays in reporting the results of such examinations to victims or next-of-kin. Other alleged delays mainly related to forensic examinations. For example, the PGO submissions accepted that, as at November 2014, results in two key matters were still awaited: the forensic examination of the cause of the fire in the Trade Union Building and the ballistic tests on the weapons with which the Omega unit was armed in February 2014.

Conclusion

489. The Panel has already found that the absence of investigative activity during the three months of the demonstrations meant that the investigations did not begin promptly. It also considers that the serious deficiencies in the investigations thereafter have significantly protracted the investigative response to the violent events in Maidan.

D. Public scrutiny of the investigations

490. The Panel recalls the European Court's jurisprudence to the effect that, in order to maintain public confidence in the authorities' adherence to the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts, it is essential that there is a sufficient element of public scrutiny of an investigation and its results in order to secure accountability in practice as well as in theory[249].

491. In this respect, the Panel notes that, well before the events at Maidan, the European Court, various Council of Europe bodies and certain NGOs, expressed serious concerns about the climate of impunity of law enforcement officers in Ukraine[250]. Ensuring a sufficient degree of public scrutiny of the Maidan investigations is a means of responding to this perception of impunity and, more particularly, of securing accountability for the violence perpetrated by law enforcement officers during the Maidan demonstrations.

492. The required degree of public scrutiny of an investigation varies from case to case: the more important or grave the issues involved, the more intense the public scrutiny required. In particular, in cases of serious human rights violations, the general public has a right to know what happened. The Maidan demonstrations and their violent suppression constitute a painful landmark in Ukraine's recent history. There were reportedly "anti-terrorist" plans to counter the demonstrations which were devised and implemented by the law enforcement bodies and the security services of the State. There were widely reported allegations of premeditated killings, ill-treatment and kidnappings by agents of the State, whether by law enforcement officers or others acting under State instruction. The centre of Kyiv was for three months barricaded and the subject of running battles, mainly between protesters and law enforcement officers. Over 100 protesters and police officers died and thousands more were injured. The Internet was full of images of the violence. The demonstrations ultimately led to a change in government and to the flight from the

[248] Amnesty International Report February 2015, "Ukraine: A Year After EuroMaydan, Justice Delayed, Justice Denied". Amnesty International June 2014, "Ukraine: A New Country or Business as Usual?", p. 3-4.
[249] See the General Principles and caselaw outlined above. On public scrutiny principles in particular, see *Hugh Jordan v. the United Kingdom*, cited above, § 109; and *Al Nashiri v. Poland*, cited above, §§ 495-497.
[250] These concerns are detailed at paragraphs 376-384 above.

jurisdiction of the senior leaders of the former regime. Accordingly, the events at Maidan were of such importance that the authorities were required to provide sufficient information about the investigations so as to facilitate meaningful public scrutiny of them.

493. While legitimate concerns of confidentiality and national security may exist, this does not mean that the investigating authorities enjoy complete discretion as regards the disclosure of information to the public. The national authorities must ensure, without unacceptably compromising national security or the necessary confidentiality of the investigations, that a sufficient degree of public scrutiny is maintained and they did not suggest to the Panel that this was not possible.

494. The Panel has therefore assessed the level and quality of the information provided to the public by the investigating and other authorities. For this purpose, the Panel has reviewed the Internet sites, press conferences, interviews and statements of representatives of the competent investigating authorities, as well as the bi-monthly written reports of the PGO to the Verkhovna Rada on the status of the investigations. These oral public statements on the Maidan-related investigations have been referenced on the Panel's Internet site[251]; while not exhaustive, the list includes the principal public information events.

495. In making its assessment, the Panel would first underline the breadth and complexity of the Maidan-related crimes and of the ensuing investigations which, it considers, called for the provision to the public of a broad outline of the basic structure of those investigations. Without basic information on what crime was being investigated and by which competent authorities and on the state of progress in those casefiles, no sufficient public scrutiny of those investigations could take place. The NGOs submissions to the Panel raised this very point. The Heaven's Hundred NGO was formed at the end of July 2014 in order to be able to understand, and thereby obtain some control over, the course of the investigations. However, the NGO was unable to follow even the basic structure of the investigations. Amnesty International considered the information given to have been so selective, incomplete, confusing and general that no clear larger picture of the state of the investigations was presented to the public. This was also the Panel's impression. Even with the more direct access it had to the investigating authorities, the Panel itself had some difficulty in piecing together the available information in order to form an overview.

496. It is precisely because of the absence of this information that the Panel considered it important to provide an outline at paragraphs 208-352 above of its understanding of the basic structure and outcome of the investigations to date, based mainly on submissions received from the authorities.

497. Understanding the investigations was made all the more complex by the casefile numbering and filing system, which seemed to the Panel to be unsuited to an investigation of this scale. A single incident could have numerous and changing casefile numbers. One example concerns the investigation into the responsibility of high-ranking officials for the dispersal of the protesters in the early morning of 30 November: the first investigation, opened in December 2013 (casefile 1053), was blocked by the grant of an amnesty before being joined to the main casefile 228; the second investigation of the same events, involving essentially the same suspects but with slightly different charges, was initially part of casefile 228; it was then separated from that file and given a new number (casefile 630); it was subsequently merged with the first investigation before the charges against three of the suspects who had absconded were separated into a new file number (casefile 1025). While there are various reasons for this[252], this casefile numbering makes an understanding of the

[251] See IAP Information Note No. 1.

[252] Notably, ensuring that an investigation does not exceed time-limits.

geography of the investigations, as well the measurement of its progress, a challenging exercise. Amnesty International raised this precise point with the Panel.

498. What was called for was a communication policy coordinated by the three investigating bodies to ensure the delivery of consistent and comprehensive information about the investigations as a whole. However, the Panel was left with the clear impression that there was no such policy with the result, as noted above, that the information was provided in a wide variety of forms and in a manner which was sporadic and uneven.

499. By way of illustration the investigations were spread, as noted above, over three investigating bodies, the PGO, the MoI, and the SSU, with regional offices of the first two also having jurisdiction over certain casefiles. While the initial tripartite press conference of 3 April 2014, a month into the investigations, was a positive initiative, it concentrated on those cases which had already attracted some media attention, rather than providing a broad outline of the investigations as a whole. The three authorities did not appear together again until the press conference on 8 December 2014. It seems that this press conference had been prompted by the requested appearance of all three authorities before the joint meeting of the Parliamentary Committees on 10 December 2014. A further PGO/MoI joint conference was held on 2 February 2015: again, the information given on the progress of the investigations was difficult to place within the larger investigation picture and appears to have been in response to growing criticism[253] about a lack of progress in the investigations.

500. A further illustration of the lack of a communication policy is the unevenness in the official presentation of the investigations. Thus, certain events, such as those of 18-20 February and the actions of titushky, were frequently invoked, whereas certain other events, such as the actions of Berkut officers in the early morning of 30 November 2013, the events of 1 December 2013, the events of the night of 11/12 December 2013 and the numerous injuries and deaths of law enforcement officers, were barely referred to. Similarly, the general pattern of communication during the first 12 months of the Maidan investigations appears to have been sporadic. While in the immediate aftermath of the Maidan events there were regular communications to the public[254], little additional information was provided until more regular updates began in mid-November 2014. While the Panel acknowledges the efforts recently made to improve the level of communication, including the provision of updates, this does not resolve the underlying problem of a lack of a communication policy designed to ensure the delivery of consistent and comprehensive information about the investigations as a whole.

501. It may be that, in certain cases, no information was provided as there had been no progress made in the investigation: however, any such lack of progress was also of importance and should have been reported to the public.

Conclusion

502. The Panel considers that ensuring a sufficient degree of public scrutiny of the Maidan investigations is a means of securing accountability for the violence perpetrated during the demonstrations. In addition, the events at Maidan were of such importance, that the authorities were required to provide sufficient information about the investigations so as to

[253] See, for example, the criticisms in the joint decision of the Parliamentary Committees dated 17 December 2014.

[254] While information was provided twice monthly by the PGO to the Verkhovna Rada and although the PGO confirmed that these reports were public documents, it does not appear that the public were made aware of their existence. In any event, if they were initially detailed, by July 2014 they had become too summary to be useful.

facilitate meaningful public scrutiny of them. That necessitated, *inter alia*, a coordinated communication policy by the three competent investigating bodies to ensure the delivery of consistent and comprehensive information about the investigations as a whole.

While some efforts were made, the Panel found that there was no such communication policy in place, as a result of which the information delivered to the public was insufficient. This failure by the authorities undermined the role of public scrutiny in securing accountability and, in addition, failed to satisfy the public's right to know what happened during the Maidan demonstrations.

E. Involvement of victims and next-of-kin

503. The Panel recalls that the victims and next-of-kin of victims must be informed of, and involved in, the criminal procedure to the extent necessary to safeguard their legitimate interests[255]. It is essential that as much information as possible about allegations and evidence should be disclosed without compromising the secrecy of the investigation or other confidentiality concerns. The timely availability of information on the course of the investigation also enables the parties concerned to challenge the relevant decisions or acts of the authorities or any lack of activity on their part[256]. The European Court has applied these principles in cases against Ukraine[257].

504. Although the Panel did not have the role of determining whether the investigation of an individual case satisfied the requirements of the Convention, it received submissions to the effect that the information provided to certain victims and next-of-kin was inadequate. The Panel has recorded these submissions below, but limits its conclusions in this regard to recalling the above-noted Convention requirements concerning the involvement of victims and next-of-kin in criminal proceedings.

505. Certain NGOs complained that victims of Maidan-related crimes, notably those assaulted in the early morning of 30 November and on 1 December 2013, had been intimidated by the investigation authorities to discourage them from pursuing their complaints[258].

Amnesty International submitted to the Panel that victims had not been adequately informed. Examples were given of cases where the PGO had failed to respond to certain victims and where the victim had not received any information at all or had not even been properly interviewed. Those particularly affected appear to have been the victims of incidents that have not been investigated with any vigour or intensity, including protesters injured during the violence on Bankova Street on 1 December 2014.

NGOs also complained that the structuring of the casefiles had interfered with the victims' rights. Thus, two different investigation casefiles had been opened concerning the

[255] See the General Principles and caselaw outlined above and, in particular, *Anguelova v. Bulgaria*, application no. 38361/97, § 140, ECHR 2002-IV.

[256] *Karabet and Others v. Ukraine*, applications nos 38906/07 and 52025/07, §§ 289-291, judgment of 17 January 2013. These principles have been stressed by other CoE bodies: see, for example, the Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, 12 March 2009,CommDH(2009)4.

[257] *Sergey Shevchenko v. Ukraine*, application no. 32478/02, § 74-75, judgment of 4 April 2006; and *Prynda v. Ukraine,* application no. 10904/05, § 56, judgment of 31 July 2012.

[258] See, for example, Amnesty International, *"Ukraine: 'No evidence of a crime': Paying the price for impunity in Ukraine"* 2011 and *"Ukraine: "EuroMaydan": Human rights violations during protests in Ukraine"*, p.13.

responsibility of high-ranking officials for the events in the early morning of 30 November: however, since all victims of this incident were joined to a single casefile, they did not have access to the other casefile, which concerned the same incident and the same suspects but related to slightly different charges.

506. The Panel notes the positive initiative taken by the then Prosecutor General, Mr Yarema, to meet on a monthly basis with the next-of-kin of protesters who died during the demonstrations[259], although the extent to which detailed investigation matters were discussed remains unclear. The PGO indicated that the next-of-kin had been informed about the procedure in the cases and had a possibility to study the collected materials. Given the presence of the Ministers of Social Policy and Health, it would appear that the earlier meetings were principally concerned with social security matters, a point which was confirmed by the NGOs heard by the Panel. Whilst representatives of the Heaven's Hundred NGO indicated to the joint meeting of the Verkhovna Rada Committees on 10 December 2014 that co-operation with the PGO had been good, the same NGO had submitted to the Panel in September 2014 that the PGO kept the monthly meetings general, deflected specific questions to investigators who were not at the meeting and dissuaded lawyers from attending. The statement by Mr Yarema that victims would be involved with the work of the newly established SID of the PGO is positive. However, as the Heaven's Hundred NGO stated at the same joint parliamentary meeting, it appears to be the case that MoI officials have failed to meet victims and their lawyers, despite numerous requests from victims to do so.

In general, the Panel considers that, given the particular nature and breadth of the Maidan investigations, better coordination between the investigating authorities and the victims and their representatives would have made a substantial contribution to the effectiveness of those investigations and helped to avoid the risk of error.

507. It is true that victims have the right, once the pre-trial investigation has ended, to have access to the casefile. However, investigations have ended in so few cases that it is not possible to draw general conclusions as to the adequacy of this process. Even if information given to the general public on the state of the investigations might otherwise have been of value, the inadequacies already identified above meant that the public information was insufficient to safeguard the rights or the legitimate interests of the victims or next-of-kin.

Conclusion

508. The Panel's role is not to determine whether the investigation of an individual case satisfied the requirements of the Convention and, in this regard, limits its conclusions to recalling the case-law of the European Court relating to the involvement of victims and next-of-kin in any criminal investigation. While the Panel has noted certain positive initiatives taken, in particular by the PGO, it does not consider that these steps, or the information provided to the public, were of themselves sufficient to protect the rights and legitimate interests of the victims and next-of–kin.

[259] It appears also, from a PGO press release of 26 November 2014, that a similar meeting took place with those who received injuries during the Maidan protests.

III. THE PANEL'S EVALUATION OF THE CURRENT STATUS OF THE INVESTIGATIONS

509. Although as noted above, the investigative obligation is one of means and not result, serious deficiencies in an investigation may undermine its ability to establish the circumstances of the case and identify those responsible[260].

510. Against the background of the considerable deficiencies identified by it in the conduct of the investigations, the Panel has reviewed the status of the various investigations to as at 23 February 2015, 12 months after the end of the Maidan demonstrations.

511. The material before the Panel reveals a marked lack of progress in the following important investigations.

512. As to the injuries inflicted on approximately 100 protesters in the early morning of 30 November during the first of the violent altercations of the Maidan demonstrations, one high-ranking official has been committed for trial and it was only in January 2015 that any law enforcement officer was notified of suspicion[261].

513. No one has been notified of suspicion as regards the infliction of injuries on numerous protesters and journalists by law enforcement officials on 1 December and during the night of 10/11 December 2013.

514. As to the infliction of injuries through the use by law enforcement officers of special means, only one high-ranking suspect is still within the jurisdiction and the Panel has not been informed of any trial date. No law enforcement officer has been notified of suspicion in this respect[262].

515. The investigation into the killings (77 protesters) and injuries by firearms (185 protesters) in January and February 2014 was a priority for the PGO as it was the most serious episode of violence, the killings on 20 February 2014 marking a turning point in the demonstrations. The only version which the PGO considered to be substantiated so far was that a unit of Berkut officers was responsible for the death of 39 protesters. Only two former Berkut officers face trial and their unit commander, an important suspect and witness, absconded from home arrest in October 2014 in the circumstances outlined above[263]. It was only in late February 2015 that the new Prosecutor General announced that 20 Berkut officers had been notified of suspicion: however, by then, 18 of those officers had absconded so that only two could be arrested.

516. The Kyiv City Prosecutor's Office was charged with important Maidan-related investigations concerning, *inter alia*, the injuries of hundreds of protesters on Bankova Street on 1 December 2013, the use and abuse of power against hundreds of AutoMaidan activists and assaults against hundreds of journalists. However, apart from the limited and belated progress made in the AutoMaidan investigation, the Panel has not been informed of any other notifications of suspicion by the Kyiv City Prosecutors' office.

517. No one has been notified of suspicion as regards the 13 deaths and 207 injuries of law enforcement officers during the Maidan demonstrations. The Panel obtained no information from the MoI about the nature or progress of those investigations. Nor did the Panel receive information as to whether any investigation had been initiated into the injuries sustained by the other 712 law enforcement officers[264]. It appears that the newly established

[260] See the General Principles and caselaw outlined above.
[261] See paragraph 353 above
[262] See paragraph 354 above.
[263] See paragraph 471 above.
[264] See paragraph 361 above.

SID has assumed responsibility only for the investigations into the deaths of law enforcement officers.

518. The only trials to have taken place concerned the violence and humiliation inflicted on a detained protester, Mr Havryliuk. However, despite the findings and admissions of guilt of serious crimes by law enforcement officers, none has served any prison sentence.

519. Finally, the Panel was not informed that any investigation had been initiated into missing persons, even the eight persons now accepted by the authorities to be missing for reasons connected to the Maidan demonstrations[265].

Conclusion

520. The Panel considers that substantial progress has not been made in the investigations into the violent incidents during the Maidan demonstrations.

While this outcome can be explained to some extent by the contextual challenges to those investigations[266], the Panel considers that the serious investigative deficiencies identified in this Report have undermined the authorities' ability to establish the circumstances of the Maidan-related crimes and to identify those responsible.

[265] See paragraphs 108-111 above. The only reference the Panel has found was in a press release of the MoI of 19 February 2015 which indicated that eight proceedings were pending as regards missing persons.
[266] See paragraph 409 above.

THE PANEL'S CONCLUSIONS

I. SUMMARY OF THE PANEL'S CONCLUSIONS

521. Based on its review of the investigations into the violent events during the Maidan demonstrations, the Panel has reached the following conclusions.

A. Conclusions concerning the investigations prior to 22 February 2014

522. The Panel concludes that there was no genuine attempt, prior to 22 February 2014, to pursue investigations into the acts of violence during the Maidan demonstrations.

The lack of genuine investigations during the three months of the demonstrations inevitably meant that the investigations did not begin promptly and this constituted, of itself, a substantial challenge for the investigations which took place thereafter and on which the Panel's review has principally focused.

B. Conclusions concerning the investigations after 22 February 2014

As regards the challenges facing the investigations:

523. The challenges confronting those responsible for the Maidan investigations since 22 February 2014 have been significant and their impact on the investigations cannot be under-estimated. However, these challenges cannot excuse any failings which did not inevitably flow from them. The authorities of the present government clearly were, and are under, an obligation to take all reasonable steps to ensure that the investigations comply with Articles 2 and 3 of the Convention.

As regards the independence of the investigations:

524. The Panel notes the numerous calls to introduce an independent and effective mechanism within Ukraine for investigations of crimes committed by law enforcement officers. The need for such a mechanism is highlighted by the crimes committed during the Maidan demonstrations.

The Panel concludes that, in certain important respects, the investigations into the Maidan cases lacked practical independence in circumstances where the investigating body belonged to the same authority as those under investigation. The Panel further considers that the appointment post-Maidan of certain officials to senior positions in the MoI contributed to the lack of appearance of independence and served to undermine public confidence in the readiness of the MoI to investigate the crimes committed during Maidan.

As regards the effectiveness of the investigations:

525. **Staffing and resources in the PGO.** The Panel concludes that the number of PGO investigators involved in the Maidan investigations during 2014 was wholly inadequate.

The Panel further concludes that there was, in addition, an absence of continuity at senior prosecutor level in the PGO in three respects. The appointment of three successive

Prosecutors General in the first 12 months of these investigations must have been detrimental to the investigations, from the standpoint both of their overall direction and the credibility of the authorities' response to the Maidan violence. The removal from the Maidan investigations of the two leaders of those investigations must have had a seriously adverse impact on the progress, quality and effectiveness of investigations. All save one of the senior prosecutors appointed to the MID of the PGO after 22 February 2014 appear to have been dismissed or removed from the Department by October 2014.

526**. Allocation of the investigative work.** The Panel did not consider the allocation of investigative work between the PGO, on the one hand, and the Kyiv City Prosecutor's Office and the MoI, on the other, to be coherent or efficient. Nor did the Panel find the PGO's supervision of the investigative work of the Kyiv City Prosecutor's Office to have been effective.

527. **MoI co-operation with the PGO.** Co-operation by the MoI was crucial to the effectiveness of the PGO investigations. The Panel concludes that there are strong grounds to believe that the MoI attitude to the PGO has been unco-operative and, in certain respects, obstructive. While the PGO complained to the MoI, the Panel considers that not all necessary steps were taken by the PGO to ensure effective co-operation by the MoI in the investigations.

It further concludes that there are strong grounds to believe that this attitude of the MoI has had a seriously negative impact on the investigations. The illustrative example of the PGO attempts to question and arrest Berkut officers, serves to confirm this finding.

528. **SSU co-operation with the PGO**. SSU co-operation was also important to the effectiveness of the PGO investigations. While the Panel has noted a reticence on the part of the PGO to investigate thoroughly the possible responsibility of the SSU at an operational level, it considers that there are grounds to believe that the SSU failed adequately to co-operate with the PGO and that this had a negative impact on the investigations into the counter-Maidan operation of the SSU.

529. **The role of the courts.** The Panel concludes that the decisions of the Pecherskyi District Court, the main court of jurisdiction in many Maidan-related proceedings, failed to comply with the requirements of Articles 2 and 3 of the Convention, undermined aspects of the effectiveness of the Maidan investigations and, more generally, weakened the deterrent effect of the judicial system in place.

530. **The investigation of Berkut officers - an illustrative example.** The Panel considers that this example, relating as it does to the most serious episode of Maidan-related violence, is illustrative of a lack of co-operation and obstruction by the MoI which seriously impeded progress in this key investigation.

The Panel also has serious concerns about the failure to notify additional Berkut officers of suspicion during the mandate of Mr Yarema, the then Prosecutor General.

531. **Amnesty.** The Panel would stress that the grant of amnesties or pardons to law enforcement officers in relation to unlawful killings or acts of ill-treatment would be incompatible with Ukraine's obligations under Articles 2 and 3 of the Convention.

As regards requirement of promptness and of reasonable expedition:

532. The Panel has already found that the absence of investigative activity during the three months of the demonstrations meant that the investigations did not begin promptly. It also considers that the serious deficiencies in the investigations thereafter have significantly protracted the investigative response to the violent events in Maidan.

As regards public scrutiny of the investigations:

533. The Panel considers that ensuring a sufficient degree of public scrutiny of the Maidan investigations is a means of securing accountability for the violence perpetrated during the demonstrations. In addition, the events at Maidan were of such importance, that the authorities were required to provide sufficient information about the investigations so as to facilitate meaningful public scrutiny of them. That necessitated, *inter alia*, a coordinated communication policy by the three competent investigating bodies to ensure the delivery of consistent and comprehensive information about the investigations as a whole.

While some efforts were made, the Panel found that there was no such communication policy in place, as a result of which the information delivered to the public was insufficient. This failure by the authorities undermined the role of public scrutiny in securing accountability and, in addition, failed to satisfy the public's right to know what happened during the Maidan demonstrations.

As regards involvement of victims and next-of-kin:

534. The Panel's role is not to determine whether the investigation of an individual case satisfied the requirements of the Convention and, in this regard, limits its conclusions to recalling the case-law of the European Court relating to the involvement of victims and next-of-kin in any criminal investigation. While the Panel has noted certain positive initiatives taken, in particular by the PGO, it does not consider that these steps, or the information provided to the public, were of themselves sufficient to protect the rights and legitimate interests of the victims and next-of–kin.

As regards the Panel's evaluation of the current status of investigations:

535. The Panel considers that substantial progress has not been made in the investigations into the violent incidents during the Maidan demonstrations.

While this outcome can be explained to some extent by the contextual challenges to those investigations[267], the Panel considers that the serious investigative deficiencies identified in this Report have undermined the authorities' ability to establish the circumstances of the Maidan-related crimes and to identify those responsible.

II. THE PANEL'S CONCLUDING REMARKS

536. The deep scars left in Ukrainian society by the violent events in Maidan will take long to heal. An important part of any such healing process is the conduct of an effective and independent investigation into the acts of violence. As has been widely acknowledged, there has been a clear lack of public confidence in Ukraine in any such investigation. On the contrary, there has been a widespread perception of impunity on the part of the law enforcement agencies and of an unwillingness or inability on the part of the investigatory authorities to bring to justice those responsible for the deaths and injuries. As is noted in the Report, this perception has been highlighted on previous occasions by various Council of Europe bodies. The Council itself has expressed the view that "impunity must be fought as a matter of justice for the victims, as a deterrent to prevent new violations, and to uphold the rule of law and public trust in the justice system". It was in recognition of the need to create

[267] See paragraphs 400-408 above.

or restore public confidence in the investigation of the Maidan events that the establishment of the Panel was first proposed by the Secretary General.

537. The Panel has in its Report drawn attention to serious deficiencies, both structural and operational, in the independence and effectiveness of the investigations which have so far been carried out and which the Panel has found do not comply with the requirements of the European Convention or the case-law of the European Court. The Panel has, however, also drawn attention to the changes made during the course of the past year to improve the level of compliance with international standards. Chief among these has been the creation of the Special Investigations Division (SID) within the PGO in December 2014. This body, which will include staff from the PGO, the MOI and the SSU, will be dedicated to the Maidan investigations and to cases of financial crimes committed under the former regime.

538. The creation of the SID is a welcome development and, since it was established, certain progress already appears to have been made in the investigations. However, it is right to recall that the Division was not established until 10 months after the end of the Maidan violence and following a series of staff changes that had broken continuity at senior prosecutor level within the PGO. The experience of the investigators and prosecutors in the SID is unknown and questions still remain as to whether the secondments from the MOI and the SSU might threaten the independence of its investigations. It remains also to be seen whether the new tripartite approach to the investigations is able to provide a timely solution to the lack of co-operation, and, in certain instances, obstructiveness, identified in the Report, which have in the view of the Panel undermined the effectiveness of the investigations to date. In this respect, the Panel has been encouraged by the recent statements of the former Prosecutor General, Mr Yarema and the Head of the SID, Mr Horbatiuk, that the working relations between the PGO and the MOI are now running smoothly.

539. The Panel is further encouraged by the more active position adopted by the current Verkhovna Rada to improve the quality of the Maidan investigations and to achieve more positive results, after a long period of virtual inactivity on the part of the former legislature. This is reflected in the recent initiative shown by the Committees for Legislative Support of Law Enforcement Activities and for Preventing and Combating Corruption in holding a joint hearing with the Prosecutor General, the Minister of the Interior and the Chief of the SSU. The statement of the Committees, following the hearing, that the three bodies had failed to carry out a full, prompt and impartial investigation of the Maidan events so as to bring to justice those responsible, in strict compliance with the law, constituted an important public recognition of the deficiencies in the investigations to date. The Committees' criticisms of the organisation of the investigations, the lack of a proper strategy, the fragmented way in which the crimes were being investigated and the lack of proper communication and coordination between the various investigative bodies, match many of the criticisms found by the Panel. The Committees' decision, *inter alia*, to recommend to the authorities measures for improving the investigations and to require the provision of monthly reports containing information on the completion of pre-trial investigations and the bringing of cases before the courts, is a welcome initiative.

540. The challenges facing the investigation remain formidable. But it is fervently to be hoped that, guided by the conclusions reached by the Panel in its Report, effective progress will be made in the investigations, thereby instilling public confidence in the legal system and helping to bring closure to this tragic chapter in the history of Ukraine.

ANNEXES

Annex I. Mandate of the International Advisory Panel ("Panel" and "IAP") 98
Annex II. Procedure followed be the Panel 99
Annex III. Dramatis Personae 101
Annex IV. Structure of the Prosecutor General Office ("PGO") 106
Annex V. Structure of State Security Service ("SSU") 108
Annex VI. Structure of the Ministry of Interior ("MoI") 109
Annex VII. Relevant law enforcement formations in Ukraine 110
Annex VIII. The Maidan-related deaths investigated under casefile no. 228 111
Annex IX. The Maidan-related injuries investigated under casefile no. 228 112
Annex X. Law enforcement officers killed and injured during the Maidan demonstrations 113
Annex XI. Maps indicating the position of protesters and law enforcement forces 18-20 February 2014 114

Annex I

Mandate of the International Advisory Panel ("Panel" and "IAP")

1. In light of the existing political crisis in Ukraine, as well as the need to create public confidence in the investigations of the violent incidents which have taken place in Ukraine from 30 November 2013 onwards, Council of Europe Secretary General Jagland has proposed to create an International Advisory Panel (IAP).

2. The investigations will be conducted by the relevant Ukrainian authorities, in accordance with the Ukrainian law. The IAP will oversee that the investigations meet all the requirements of the European Convention on Human Rights and the case law of the European Court of Human Rights. To this end the IAP shall receive regular reports from the Prosecutor General's office on the progress of the investigations into mentioned incidents. The IAP shall have full access to all relevant information and the right to request and receive any additional information as it deems necessary. The IAP may issue advice and recommendations to relevant instances and bodies. Civil society shall have the right to contact and communicate freely with the IAP.

3. The Panel will be composed of three members: one to be appointed by the authorities, one by the opposition, and one from the international community - who will chair the Panel. All members should be legal professionals rather than politicians, and be widely respected within the Ukrainian society for their high level of professionalism and integrity.

4. At the end of the IAP's mission, a final report should be prepared by the Chair of IAP and presented to the Secretary General of the Council of Europe and the Ukrainian authorities.

5. In view of ensuring the necessary working conditions of the IAP members, the Ukrainian Parliament may provide them with the necessary premises and tools.

6. Financial means for the mission of the IAP international member and his staff will be provided by the Council of Europe.

Annex II

Procedure followed be the Panel

A. Written procedure

The Panel made several written requests for information to various authorities, requesting detailed information about the nature and scope of the investigations:

- On 14 May 2014 letters were sent to the PGO, the MoI, the Ministry of Defence, the Ministry of Justice, the State Executive Service of Ukraine, the Ministry of Health ("MoH"), the Parliamentary Commissioner for Human Rights, the Mayor's Office in Kyiv, three parliamentary committees (the Parliamentary Committee for Combatting Organised Crime and Corruption, the Parliamentary Committee for Human Rights, National Minorities and Inter Ethnic Relations and the Parliamentary Committee for Legal Support to Law Enforcement Activities) and the Parliamentary Interim Commission of Enquiry chaired by Mr Moskal.

  Responses were received from certain authorities.

- On 26 June 2014 further letters were sent to the PGO, the MoI, the MoH, the Mayor's Office in Kyiv, the Ministry of Justice, the State Executive Service and the Parliamentary Interim Commission of Enquiry.

  Replies were received from most of the authorities.

- On 5 August 2014 letters were addressed to the PGO, the MoI, the MoH, the SSU, the Ministry of Justice and the State Court Administration.

  Replies were received from all the authorities, including from the SSU further to a letter from the Panel dated 29 August 2014.

- On 3 October 2014 letters were sent to the PGO, the MoI and the SSU.

  Replies were received from the PGO and the MoI. The SSU proposed to respond to the questions orally and the Chief of the SSU later met with the Panel (see below).

- On 19 November 2014 further information was requested from the PGO, the MoI and the SSU. Replies were received from all three.

- Finally, on 22 December 2014 letters were sent to the Parliamentary Committee on Legislative Support of Law Enforcement and the Parliamentary Committee on Corruption Prevention and Counteraction, the PGO and the MoI. Replies were received from all authorities.

- Through its web page, the Panel also invited non-governmental organizations to make submissions. Several national human rights groups made joint submissions to the Panel[268], as did Amnesty International, Human Rights Watch, ANDANTE, an international NGO, and IGCP (Information Group on Crimes against the Person).

[268]EuroMaidan SOS, Ukrainian Helsinki Human Rights Union, Centre for Civil Liberties, Kharkiv Human Rights Group, Human Rights Information Centre, Ukrainian Legal Aid Foundation, Centre for political and legal reforms, Kharkiv Regional Foundation *Public Alternative*, Public Monitoring Group *Ozone*, and Association of Ukrainian Human Rights Monitors on Law Enforcement, with the support of the Secretariat of the Commissioner for Human Rights and the IRF Programme Initiative *Human Rights and Justice*

B. Oral procedure

The Chair of the Panel held certain preliminary meetings in June and July 2014.

- On 26 June 2014 President Poroshenko met with Sir Nicolas Bratza in the course of the former's visit to the Council of Europe. In his address on the same day to the Parliamentary Assembly of the Council of Europe, the President endorsed the work of the Panel, confirmed that the Ukrainian authorities were ready to co-operate and agreed to establish a Focal Point for the Panel within his own Administration.
- On 4 July 2014 Sir Nicolas Bratza visited Kyiv and had initial contact meetings with the Minister for Foreign Affairs, Mr Pavlo Klimkin, the Prosecutor General, Mr Vitalii Yarema, the First Deputy Minister of Justice, Ms Inna Yemelianova and Mr. Oleg Makhnitskyi, who had been appointed to act as the Focal Point for the Panel in the Presidential Administration.

The Panel also held a series of meetings in Kyiv with relevant authorities from August 2013 to December 2014:

- On 1 August 2014 the Panel met with:
  - the Prosecutor General, Mr Yarema, as well as five representatives of his office;
  - the First Deputy Minister of Justice, Ms Inna Yemelianova, and another representative of her office;
  - three representatives of the MoH, including a Deputy Minister, Nataliya Lisnevska;
  - six representatives of the MoI.
- On 3-9 September 2014 the Panel met with:
  - the Parliamentary Commissioner for Human Rights, Ms Valeriia Lutkovska;
  - Adviser to the President and the Focal Point for the Panel, Mr Makhnitskyi, and another official from the Presidential Administration;
  - two representatives of the Ministry of Justice, including the Deputy Minister of Justice, Ms Inna Yemelianova;
  - seven representatives of the PGO;
  - ten representatives of the MoI;
  - two representatives of the MoH, including a Deputy Minister, Yuriy Savko;
  - representatives of certain NGOs: the Centre for Civil Liberties, Heaven's Hundred and Amnesty International.
- On 1 November 2014 the Panel met with Mr Makhnitskyi the Focal Point for the Panel.
- On 13-14 November 2014 a series of meetings were held in Kyiv. In particular, the Panel met with:
  - the Chief of the SSU, Mr Valentyn Nalyvaichenko, and a representative of his office;
  - eight representatives of the PGO;
  - six representatives of the MoI.
- On 20 December 2014 the Panel met with a Deputy Prosecutor General, Mr Oleksii Bahanets, with Mr Ihor Shcherbyna (former Deputy Head of the Main Investigations Department ("MID") of the PGO in February – July 2014) and with Mr Serhii Horbatiuk (Head of the newly established Special Investigations Division of the PGO).

Annex III

Dramatis Personae

Name	Background
Abroskyn Pavlo	Berkut officer arrested on 2-3 April 2014 on suspicion of, *inter alia*, abuse of office and the murder of protesters on Instytutska Street on 20 February 2014.
Aliiev Dzhalal	Alleged to be a member/organiser of titushky groups.
Avakov Arsen	Member of Parliament at the time of the Maidan demonstrations. Minister of the Interior since 27 February 2014.
Azarov Mykola	Prime Minister of Ukraine from March 2010 to January 2014.
Badera Oleksandr	EuroMaidan activist, received firearm injuries on 22 January 2014 and later died in a hospital.
Bahanets Oleksii	Deputy Prosecutor General since February 2014, Head of MID (June-August 2014), in charge of leading and supervising Maidan-related investigations. Since the end of August 2014 Head of the Main Department for Supervision over Observance of Laws in Enforcement of Court Decisions in Criminal Matters and of Other Compulsory Measures. Since February 2015 in charge of the co-ordination of the work of the MID of the PGO.
Baloha Viktor	Member of Parliament.
Berezovskyi Denys	Former Navy Commander of Ukraine; suspected of state treason in the course of the annexation of the Crimea to the Russian Federation in March 2014.
Bik Volodymyr	General and Head of the SSU Department for Opposing Cybercrimes and Head of the SSU Counterintelligence Department during the Maidan demonstrations.
Bulatov Dmytro	Formerly a EuroMaidan and AutoMaidan activist. Minister of Youth and Sports from February to December 2014.
Chebotariov Oleksii	Alleged organiser of titushky operations during the Maidan demonstrations.
Chornovol Tetiana	Ukrainian journalist and civic activist, one of the leaders of the EuroMaidan protest campaign. Member of Parliament since November 2014.

Demianov D.	Accompanied Viacheslav Veremii and was injured on 19 February 2014.
Dykan Pavlo	Lawyer, Heaven's Hundred NGO.
Fedchuk Petro	Head of the Kyiv Public Safety Police during the Maidan demonstrations.
Hataliak Taras	Lawyer, Heaven's Hundred NGO.
Havryliuk Mykhailo	EuroMaidan activist, kozak and member of Maidan's Self-Defence. Member of Parliament since November 2014.
Horbatiuk Serhii	(Senior) investigator at PGO since 2004. Since April 2014 Head of the second investigating unit of the Major Crimes Division of the MID of the PGO. Head of Special Investigations Division since December 2014.
Kliuiev Andrii	Secretary of the National Security and Defence Council from February 2012 to January 2014. Head of the President's Administration from January to February 2014.
Klychko Vitalii	Formerly a Member of Parliament. Head of the Kyiv City Administration (Mayor of Kyiv) since June 2014.
Klymenko Oleksandr	Minister of Revenues and Duties, December 2012 to February 2014.
Koriak Valerii	Head of the Kyiv Main Directorate of the MoI, November 2012 to December 2013.
Kravets Dmytro	Serviceman of the Internal Troops convicted of having ill-treated Mr Havryliuk on 22 January 2014.
Krysin Yurii	Alleged to be a member/organiser of titushky groups.
Kryvolap Ya.	Lieutenant-colonel charged with failing to stop ill-treatment of Mr Havryliuk on 22 January 2014, pleaded guilty, but released by court from criminal responsibility.
Kusiuk Serhii	Deputy Head of the Berkut unit at the time of the Maidan demonstrations.
Lekar Serhii	Deputy Minister of the Interior-Head of the MoI Central Office at the time of the Maidan demonstrations.
Lomonos Leonid	Serviceman of the Internal Troops convicted of having ill-treated Mr Havryliuk on 22 January 2014.
Lutsenko Ihor	Journalist and EuroMaidan activist. Member of Parliament since November 2014.

Lutsenko Yurii	Minister of Interior: February 2005 to December 2006, December 2007 to January 2010. On 27 February 2012 he was convicted by a criminal court and sentenced to four years' imprisonment and to a confiscation order. He was amnestied and released in April 2013. Member of Parliament since November 2014.
Lymarenko Oleksii	Accompanied Viacheslav Veremii and was injured on 19 February 2014.
Makhnitskyi Oleh	Member of Parliament at the time of the Maidan demonstrations. Acting Prosecutor General from February to June 2014. Adviser to the President of Ukraine Petro Poroshenko, June 2014-February 2015.
Marynenko Oleh	Head of the MoI Public Safety Department at the time of the Maidan demonstrations.
Mazurenko Pavlo	Died on 22 December 2013 after being beaten.
Moskal Hennadii	Formerly Member of Parliament. Chair of the Temporary Investigation Commission, set up by Parliament on 16 January 2014, to investigate unlawful actions during the Maidan demonstrations. Head of the Luhansk State Administration since September 2014.
Nalyvaichenko Valentyn	Formerly Chief of the SSU in 2006-2010. Chief of the SSU since 24 February 2014.
Nihoian Serhii	EuroMaidan activist, killed on 22 January 2014.
Osipchuk M.	Commander of the Internal Troops convicted for failure to stop ill-treatment of Mr Havryliuk on 22 January 2014.
Pashynskyi Serhii	Acting Head of President's Administration from March to June 2014.
Paskal Vasyl	Head of the MoI Department of Criminal Search between 2012 and 2014. Deputy Minister of the Interior since December 2014.
Plakhotniuk Oleh	Commander of the unit of the Internal Troops to which Messrs Kravets and Lomonos belonged.
Popov Oleksandr	Head of the Kyiv City Administration (Mayor of Kyiv) from November 2010 to January 2014.
Poroshenko Petro	President of Ukraine since May 2014.
Pryshko Anatolii	Deputy Prosecutor General during the Maidan demonstrations.
Pshonka Viktor	Prosecutor General, November 2010 to February 2014.

Ratushniak Viktor	Deputy Minister of the Interior at the time of the Maidan demonstrations.
Rybak Volodymyr	Chairman (Speaker) of Parliament, December 2012 to February 2014.
Sadovnyk Dmytro	Commander of a Berkut unit alleged to have shot protesters on 20 February 2014 in Instytutska Street.
Sakal Vitalii	Deputy Head of MID of the MoI (January-February 2014). Head of the MoI Main Investigation Department since March 2014 and Deputy Minister of the Interior since April 2014.
Senyk Roman	EuroMaidan activist, sustained firearm injuries on 22 January 2014, later died.
Shcherbyna Ihor	Head of the MID of the PGO (February-July 2014); Deputy Head of the Main Investigative Department (July-September 2014); re-appointed as Head of the MID in February 2015.
Shokin Viktor	Formerly Deputy Prosecutor General (2002-2003; 2004-2007 and 2014-2015). Prosecutor General since February 2015.
Shuliak Stanislav	MoI Internal Troops Commander, May 2012 to February 2014.
Sivkovych Volodymyr	Deputy Secretary of the National Security and Defence Council, October 2010 to December 2013.
Truba Roman	First Deputy Head of the MID and the head of an investigative unit within MID from February to July 2014. Head of the Major Crimes Division of the MID of the PGO since July and as at October 2014.
Turchynov Oleksandr	Member of Parliament at the time of the Maidan demonstrations. Acting President of Ukraine, February to June 2014. Chairman (Speaker) of Parliament, February to November 2014. Secretary of the National Security and Defence Council since December 2014.
Tymoshenko Yulia	Member of Parliament, leader of Batkivshchyna party. Former Prime Minister (January to September 2005, December 2007 to March 2010). In 2011 found guilty of abuse of power and sentenced to seven years' imprisonment, released on 22 February 2014.
Tytych Vitalii	Lawyer, Heaven's Hundred NGO.
Verbytskyi Yurii	EuroMaidan activist.
Veremii Viacheslav	Journalist of the Vesti newspaper shot dead on 19 February 2014.

Volkova Svitlana	Judge of the Pecherskyi District Court of Kyiv.
Vovk Serhii	Judge of the Pecherskyi District Court of Kyiv.
Yakymenko Oleksandr	Chief of the SSU, January 2013 to February 2014.
Yanukovych Viktor	Former President of Ukraine, February 2010 to February 2014.
Yarema Vitalii	Prosecutor General, June 2014 to February 2015.
Yarovyi Serhii	Adviser to Minister of the Interior, 2012 to 2014. Deputy Minister of the Interior since 2014.
Zakharchenko Vitalii	Minister of the Interior, November 2011 to February 2014.
Zhyznevskyi Mykhailo	EuroMaidan activist, killed on 22 January 2014.
Zinchenko Serhii	Berkut officer arrested on 2-3 April 2014 on suspicion of, *inter alia*, abuse of office and the murder of protesters on Instytutska Street on 20 February 2014.
Zinov Pavlo	Head of the MoI Department of Material Support at the time of the Maidan demonstrations.
Zubrytskyi Viktor	Alleged to be an organiser of titushky operations during the Maidan demonstrations.

Annex IV

Structure of the Prosecutor General Office ("PGO")[269]

The PGO is headed by the Prosecutor General. The Prosecutor General has seven deputies. Those deputies are also the heads of the eight main departments of the PGO.

1. First Deputy Prosecutor General heads two main departments:

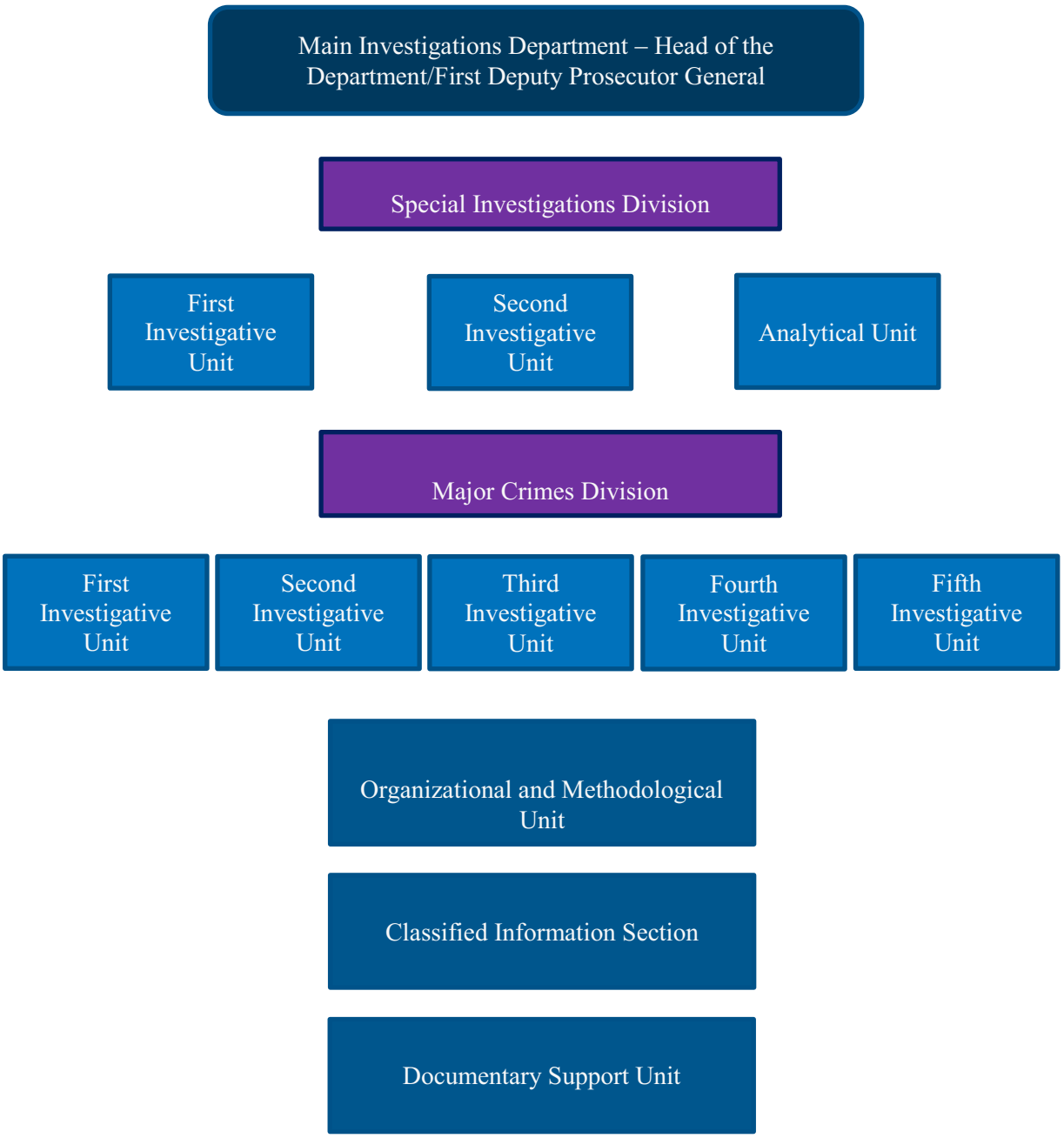
   (i) Main Department for Procedural Guidance and Supervision over Observance of Laws by Special Units and Agencies Fighting Organised Crime and Corruption, in Transportation Matters and in Criminal Proceedings Carried out by Investigators of Public Prosecution Office; and

   (ii) Main Investigations Department

2. Deputy Prosecutor General - Head of Main Department for Supervision of Criminal Proceedings
3. Deputy Prosecutor General - Chief Military Prosecutor
4. Deputy Prosecutor General - Head of Main Department for Representation Before Court and Participation in Criminal Proceedings
5. Deputy Prosecutor General - Head of Main Department for Supervision of the Observance of Laws in Enforcement of Court Decisions in Criminal Matters and of Other Compulsory Measures
6. Deputy Prosecutor General - Head of Main Department of Human Resources and Support for Functioning of Prosecution Service
7. Deputy Prosecutor General - Head of Main Department of International Legal Co-operation.

[269] Based on the relevant information concerning the PGO structure available on the official PGO web-site as at 3 February 2015: http://www.gp.gov.ua/.

Structure of the Main Investigations Department of the PGO[270]



[270] Based on the relevant information concerning the structure of the MID of the PGO available on the official PGO web-site as at 3 February 2015: http://www.gp.gov.ua/.

Annex V

Structure of State Security Service ("SSU")

The structure and functions of the SSU are defined by the Law On the Security Service of Ukraine of 1992. The SSU is composed of the Central Department which is, in turn, composed of various operational divisions and regional departments and of the Anti-Terrorist Centre.

1. SSU Central Department

The SSU Central Department is composed of the Administration of the Chief of the SSU and the following operational divisions:

- counter-intelligence;
- protection of national statehood;
- counter-intelligence protection of the state interest in the area of economic security;
- counter-intelligence protection of the state interest in the area of informational security;
- protection of state secret and licensing;
- fighting corruption and organised crime;
- fighting terrorism, protection of parties to criminal proceedings and law enforcement agents;
- operative and technical measures;
- operative documenting;
- investigative division;
- information and analysis;
- staff division;
- facilities, financial, medical and other support of the activities of the SSU.

2. Regional departments

Regional departments of the SSU are subordinate to the Central Department. The heads of regional departments are appointed by the Chief of the SSU, with the consent of the head of the local state administration.

Each of the 24 administrative regions (oblast) in Ukraine has its own SSU department, except for the Kyiv Region Department of the SSU which is joined to the Kyiv City SSU Department. There is also a regional SSU department of the Crimea and a separate department for Sebastopol City.

3. Anti-Terrorist Centre

The Anti-Terrorist Centre was created within the structure of the SSU for the organisation and carrying out of anti-terrorist operations and the coordination of agencies which are fighting terrorism or are involved in the conduct of anti-terrorist operations. Its structure is approved by decree of the President following submissions from the Cabinet of Ministers.

Annex VI

Structure of the Ministry of Interior ("MoI")[271]

The general structure of the Ministry of Interior is defined by the Law on General Structure and Numbers of the Ministry of Interior of 10 January 2002[272]. According to Article 1 of that Law the general structure of the MoI is as follows:

- MoI as a central organ;
- state departments in the structure of MoI itself responsible for specific functions;
- main departments, regional departments, departments of Crimea, Kyiv City and Sebastopol City, departments and divisions of MoI in transport administration;
- sub-divisions of the judicial police;
- sub-divisions of the local police;
- main organ of military administration;
- educational, scientific and research institutions.

The MoI is headed by the Minister. The MoI contains, among others, the following departments.

The Internal Security Department deals mainly with the prevention and detection of crimes committed by law enforcement agents in connection with their service in law enforcement authorities, including the loss by law enforcement agents of weapons and ammunition.

The Main Investigation Department is mainly concerned with pre-trial investigations of criminal cases. It also is charged with managing and supervising pre-trial investigations of subordinate organs.

The criminal police consists of the following departments: Department of Criminal Search, Department of Fighting Economic Crimes, Department of Operations Service; Department of Operational and Technical Measures; Department of Fighting Human Trafficking Crimes; Department of Fighting Illegal Drugs Trafficking; Department of Cyber Crimes; Department of Criminal Police for Minors; Functional Division of Ukrainian Bureau of Interpol.[273]

The public security police comprises the Public Security Department, the Department of State Road Patrol, and the Department of Organisation of Activities of Special Police Forces.

[271] Largely based on the information available on the MoI official web-site as at 10 March 2015: http://mvs.gov.ua/mvs/control/main/uk/publish/article/524421.

[272] http://zakon3.rada.gov.ua/laws/show/2925-14

[273] The Department of Fighting Organised Crime was liquidated at the beginning of 2015.

Annex VII

Relevant law enforcement formations in Ukraine

During the Maidan demonstrations the authorities deployed various special law enforcement formations in Kyiv city centre on public order duties from November 2013 to February 2014. They belonged to different authorities and departments.

The MoI units deployed included:

- The Berkut Special Police Force: a special police unit for the protection of public order and for fighting organised crime, subordinated to the MoI Department of Public Order Protection;
- The Sokil Special Unit: a special unit within the Department for Fighting of Organised Crime, which provides support during operations of this department;
- Special units of the Internal Troops[274] such as 'Omega', 'Jaguar', 'Bars', 'Gepard' and 'Tygr'.

The "Alpha" unit was also deployed. It is a special unit of the SSU (Centre for Special Anti-Terrorist Operations, Protection of Participants of Criminal Proceedings and Law Enforcement Officials).

The units of the Department of State Guard are subordinate to the President and controlled by the Verkhovna Rada. Servicemen from this unit were deployed for the protection of governmental buildings.

All special forces have, in their structure, sniper units.

[274] MoI Internal Troops are distinct from Military Troops, the latter being under the command of the Minister of Defence. According to the MoI Internal Troops Act of 1992, in force at the material time, the tasks of the Internal Troops included, *inter alia*, participation in public order protection. The Internal Troops at that time comprised approximately 33,000 servicemen.

Annex VIII

The Maidan-related deaths investigated under casefile no. 228[275]

The deaths of 77 persons (of whom 67 suffered from firearm injuries) are investigated under casefile 228:

- 3 persons died from firearm injuries during the protests on 22 January 2014 in Hrushevskoho Street;
- 8 persons died from firearms and other (non-firearms) injuries during the dispersal of the march to Parliament on 18 February 2014;
- 13 persons died from firearm and other injuries during the assault and arson of the Trade Union Building in the night of 18-19 February 2014;
- 2 persons were found in the Trade Union Building after the fire;
- 2 persons died from firearm injuries at around midnight on 18/19 February 2014 in Volodymyrska Street as a result of 'titushky' actions;
- 49 persons died from firearm injuries during the clashes in Instytutska Street on 20 February 2014.

[275] Based on the PGO submissions to the Panel

Annex IX

The Maidan-related injuries investigated under casefile no. 228[276]

A. 183 protesters sustained firearm wounds from 19 January to 22 February 2014

- 19 January 2014 - 2 persons;
- 21 January 2014 - 2 persons;
- 22 January 2014 - 3 persons;
- 18 February 2014 - 62 persons;
- 19 February 2014 - 20 persons;
- 20 February 2014 - 93 persons;
- 22 February 2014 - 1 person.

Of these, 77 persons sustained minor injuries, 35 sustained moderately severe injuries and 58 sustained grievous bodily harm.

B. Other injuries (non-firearms) inflicted on protesters on 18-20 February 2014[277]

The investigation established that over 450 people had been injured on that dates, of whom 293 people were acknowledged as victims:

- on 18 February 2014, 236 persons were injured on those days, of whom 38 persons sustained serious injuries; 73 sustained moderately severe injuries; and 125 sustained minor injuries.
- on 19 February 2014, 41 persons were injured, of whom 7 persons sustained serious injuries; 11 sustained moderately severe injuries; and 23 sustained minor injuries.
- on 20 February 2014, 20 persons were injured, of whom 4 persons sustained serious injuries; 1 person sustained moderately severe injuries; and 15 persons sustained minor injuries.

[276] Based on the PGO submissions to the Panel. The information was described as preliminary since all the necessary forensic examinations had not been completed.
[277] In late October 2014 case file No. 42014100000000180 was transferred from the Kyiv City Prosecutor's Office to the PGO and merged with casefile 228.

Annex X

Law enforcement officers killed and injured during the Maidan demonstrations[278]

A. Killing of law enforcement officers[279]

MoI casefile no. 42014000000000061 concerns the death of 13 law enforcement officers who sustained firearm injuries on 18-20 February 2014 in Khreshchatyk and Instytutska Streets:

- seven officers (five servicemen of the Internal Troops and two Berkut officers) were shot on 18 February 2014 between 4.30 p.m. and 10.40 p.m. in Khreshchatyk and Instytutska Streets;
- two officers (one serviceman of the Internal Troops and one Berkut officer) were shot on 19 February 2014 at 2.00 a.m. and 5.30 a.m. in Instytutska Street;
- four officers (two Berkut officers, one serviceman of the Internal Troops and one patrol service officer of the MoI in Kyiv) were shot on 20 February 2014 between 8.00 and 9.25 a.m. in Khreshchatyk and Instytutska Streets.

B. Injuries to law enforcement officers

The information provided by the Health and Rehabilitation Department of the MoI indicates that, from 30 November 2013 to 23 February 2014, 919 law enforcement officers were injured.

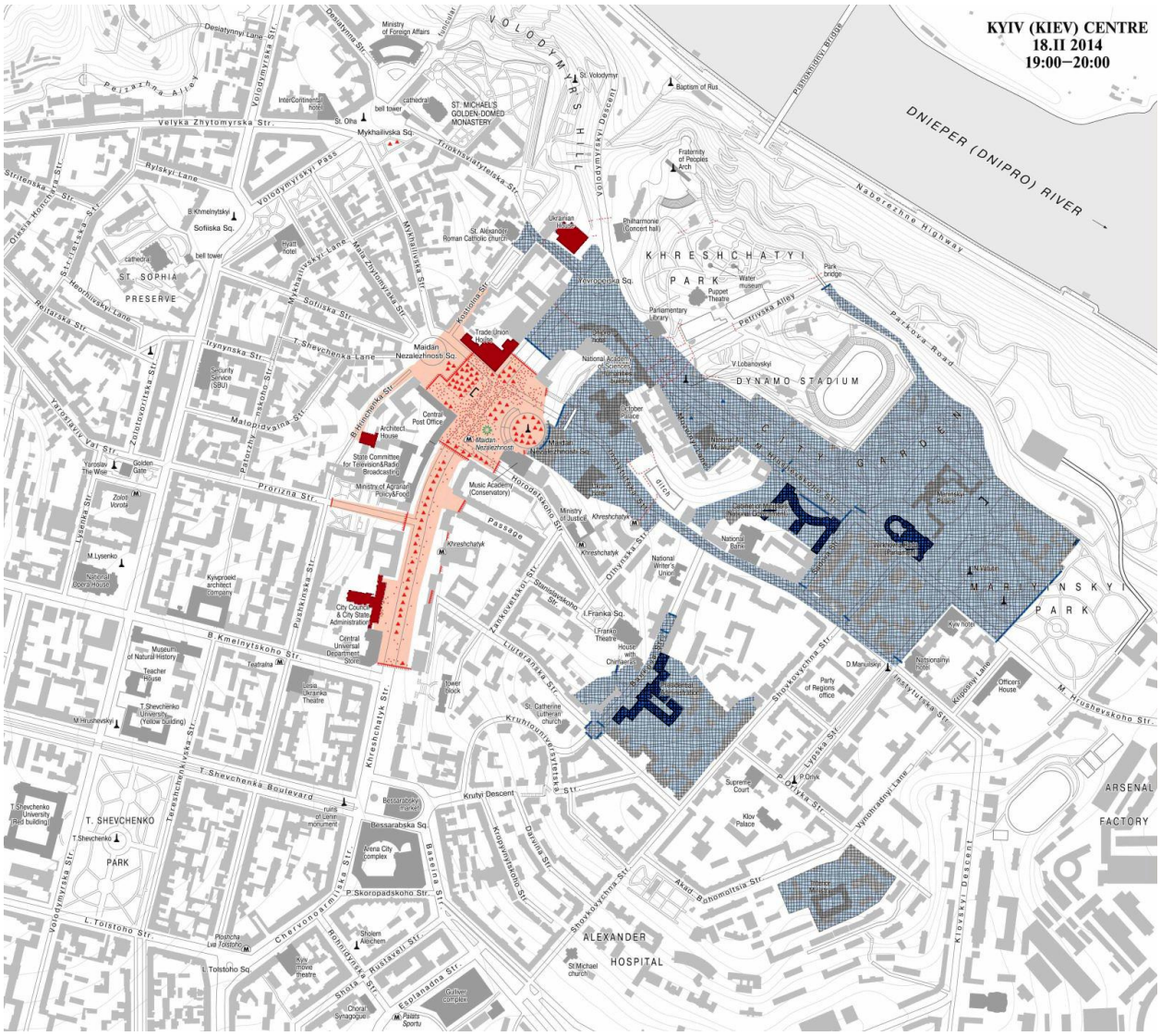
Casefile 42014000000000061 concerns only 207 law enforcement officers injured from 18-20 February 2014.

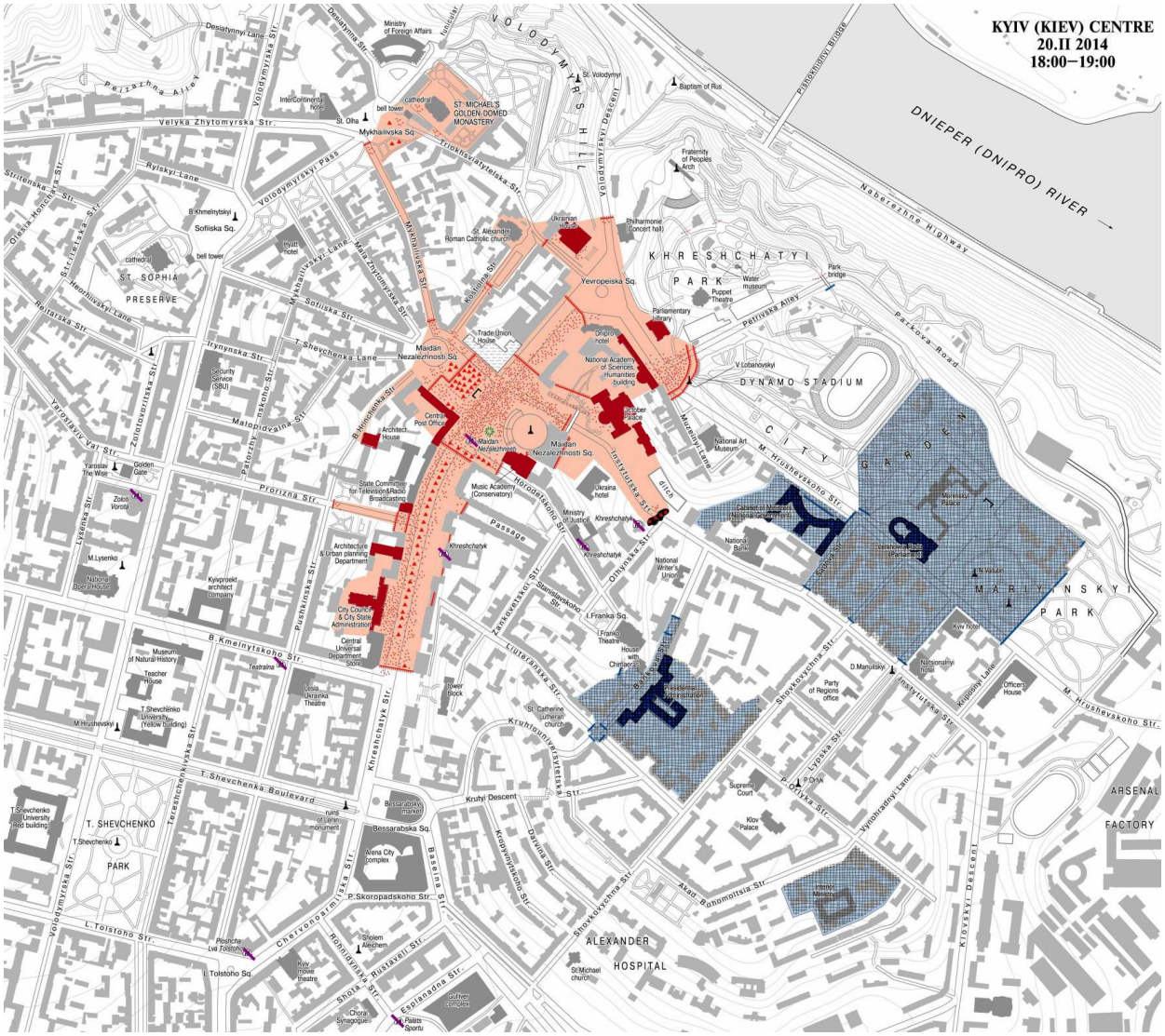
[278] Based on the MoI submissions to the Panel

[279] This investigation was transferred, in December 2014, to the newly established Special Investigations Division of the PGO.

Annex XI

Maps indicating the position of protesters and law enforcement forces
18-20 February 2014[280]


KYIV (KIEV) CENTRE
18.II 2014
19:00–20:00
DNIEPER (DNIPRO) RIVER
VOLODYMYRS HILL
KHRESHCHATYI PARK
DYNAMO STADIUM
MARYINSKYI PARK
ARSENAL FACTORY
ALEXANDER HOSPITAL
T. SHEVCHENKO PARK
ST. SOPHIA PRESERVE
Maidan Nezalezhnosti Sq.
Trade Union House
City Council & City State Administration
Ministry of Justice
Ministry of Agrarian Policy&Food
Ministry of Foreign Affairs
Supreme Court
Party of Regions office
Parliamentary Library
Philharmonic (Concert hall)
Fraternity of Peoples Arch
Baptism of Rus
St. Volodymyr
Mykhailivska Sq.
Sofiiska Sq.
Besarabska Sq.
T. Tolstoho Sq.
Velyka Zhytomyrska Str.
Volodymyrskyi Descent
Naberezhna Highway
Panoramnyi Bridge
Parkova Road
Petrivska Alley
Khreshchatyk
Khreshchatyk Str.
Hrushevskoho Str.
T. Shevchenka Boulevard
Volodymyrska Str.
Lysenka Str.
Prorizna Str.
Pushkinska Str.
Zankovetskoi Str.
Lvivska Str.
Shovkovychna Str.
Lysogirska Str.
Instytutska Str.
Lyutneva Str.
Kostiolna Str.
Mykhailivska Str.
Horodetskoho Str.
Olminska Str.
Kyrylivska Str.
Klovskyi Descent
Basseina Str.
Kreschatyk Str.
Velyka Zhytomyrska Str.
Rylskyi Lane
Reitarska Str.
Irynynska Str.
Zolotovorotska Str.
Yaroslaviv Val Str.
Pankivska Str.
Mezhyhirska Str.
Sofiiska Str.
T. Shevchenka Lane
Heorhiivskyi Lane
Mykhailivskyi Lane
Trinitarska Str.
Desiatynna Str.
Desiatynnyi Lane
Pekarska Alley
Olesia Honchara Str.
Instytutska Str.
Trinitarska Str.
Rylskyi Lane
Volodymyrskyi Pass
Mykhailivska Str.
Kostiolna Str.
Trade Union House
Maidan Nezalezhnosti Sq.
Security Service (SBU)
Architect. House
Stone Committee for Television&Radio Broadcasting
Ministry of Agrarian Policy&Food
Music Academy (Conservatory)
Central Post Office
Passage
Khreshchatyk
Ministry of Justice
Khreshchatyk
National Writer's Union
I. Franka Sq.
I. Franko Theatre
House with Chimaeras
Tower Block
St. Catherine Lutheran church
Krutyi Descent
Besarabska Sq.
Arena City complex
P. Skoropadskoho Str.
Chervonoarmiiska Str.
Rohnidynska Str.
Sholem Aleichem
Kyiv Jewish Theatre
Shota Rustaveli Str.
Esplanadna Str.
Gallery complex
Choral Synagogue
Palats Sportu
St.Michael church
Shovkovychna Str.
Akad. Bohomoltsa Str.
Klov Palace
Lysogirska Str.
P.Orlyk
Lypska Str.
Lyubomudryi Lane
Instytutska Str.
Kyrylivska Str.
D.Manuilsky
Natsionalnyi hotel
Officers' House
M. Hrushevskoho Str.
Shovkovychna Str.
Zankovetskoi Str.
Stanislavskoho Str.
Lviv Hotel
National Bank
Dynamo Kyiv Football Club
Stroiteley Str.
Kyrylivska Str.
Olminska Str.
Horodetskoho Str.
Mykhailivska Str.
Kostiolna Str.
Lysenka Str.
Pushkinska Str.
Prorizna Str.
Zolote Vorota
Golden Gate
Yaroslav The Wise
M.Lysenko
National Opera house
Kyivproekt architect company
B. Khmelnytskoho Str.
Museum of Natural History
Teacher House
Teatralna
Lesia Ukrainka Theatre
T.Shevchenko University (Yellow building)
M.Hrushevskyi
T.Shevchenko University (Red building)
T.Shevchenko
T. SHEVCHENKO PARK
L. Tolstoho Str.
Ploshcha Lva Tolstoho
Volodymyrska Str.
Terestchenkivska Str.
Kreschatyk Str.
Olesia Honchara Str.
Str.Reitarska Str.
Heorhiivskyi Lane
Mykhailivskyi Lane
Mezhyhirska Str.
Sofiiska Str.
T. Shevchenka Lane
Irynynska Str.
Zolotovorotska Str.
Yaroslaviv Val Str.
Pankivska Str.
Matejpidvalna Str.
Prorizna Str.
Lysenka Str.
M.Lysenko
Kyivproekt architect company
B. Khmelnytskoho Str.
Museum of Natural History
Teacher House
Teatralna
Lesia Ukrainka Theatre
T.Shevchenko University (Yellow building)
M.Hrushevskyi
T. Shevchenka Boulevard
T.Shevchenko University (Red building)
T. SHEVCHENKO
T.Shevchenko
PARK
Volodymyrska Str.
L. Tolstoho Str.
Ploshcha Lva Tolstoho
T. Tolstoho Sq.
Chervonoarmiiska Str.
Rohnidynska Str.
Shota Rustaveli Str.
Esplanadna Str.
Choral Synagogue
Palats Sportu
Gallery complex
Sholem Aleichem
Kyiv Jewish Theatre
P.Skoropadskoho Str.
Arena City complex
Besarabska Sq.
Basseina Str.
Krutyi Descent
Besarabskyi Market
ruins of Lenin monument
T. Shevchenka Boulevard
Terestchenkivska Str.
Kreschatyk Str.
Tower Block
St. Catherine Lutheran church
Krutyi Descent
Krutyhorivska Str.
Zankovetskoi Str.
Stanislavskoho Str.
I. Franka Sq.
I. Franko Theatre
House with Chimaeras
Lviv Hotel
National Bank
Dynamo Kyiv Football Club
Stroiteley Str.
Kyrylivska Str.
Olminska Str.
Horodetskoho Str.
Mykhailivska Str.
Kostiolna Str.
Lysenka Str.
Pushkinska Str.
Prorizna Str.
Zolote Vorota
Golden Gate
Yaroslav The Wise
M.Lysenko
National Opera house


KYIV (KIEV) CENTRE
20.II 2014
18:00–19:00
DNIEPER (DNIPRO) RIVER
V O L O D Y M Y R S K Y H I L L
K H R E S H C H A T Y I
P A R K
D Y N A M O S T A D I U M
M A R I Y I N S K Y I
P A R K
ST. SOPHIA
PRESERVE
T. SHEVCHENKO
PARK
ARSENAL
FACTORY
ALEXANDER
HOSPITAL
Maidan Nezalezhnosti Sq.
Maidan Nezalezhnosti
Trade Union House
Ukraina hotel
Ukrainian House
Philharmonic (concert hall)
Yevropeiska Sq.
Bessarabska Sq.
Bessarabskyi market
Arena City complex
Sofiiska Sq.
Mykhailivska Sq.
Cathedral
bell tower
ST. MICHAEL'S GOLDEN-DOMED MONASTERY
St. Volodymyr
Baptism of Rus
Ministry of Foreign Affairs
Fraternity of Peoples Arch
Parliamentary Library
National Academy of Sciences, Humanities building
Rada
Rada hotel
Cabinet of Ministers
Ministry of Justice
Khreshchatyk
Passage
Central Post Office
Architect House
Music Academy (Conservatory)
State Committee for Television & Radio Broadcasting
Architecture & Urban planning Department
City Council & City State Administration
Central Universal Department Store
Kyivproekt architect company
Museum of Natural History
Teacher House
Tetraina
Lesia Ukrainka Theatre
T Shevchenko University (Yellow building)
T Shevchenko University (Red building)
Tower Block
St. Catherine Lutheran church
I. Franko Sq.
I. Franko Theatre
House with Chimeras
Supreme Court
Party of Regions office
Kiev Palace
Officers' House
Kyiv hotel
Nationalnyi hotel
Ukrainian Military Academy
Kyiv Opera theatre
Kyiv movies theatre
Choral Synagogue
Sport Palace complex
Golden Gate
Zoloti Vorota
Security Service (SBU)
Ministry of Justice
National Writer's Union
National Bank
Water museum
Puppet Theatre
Park bridge
Y.Lobanovskyi
National Art Museum
Mezenivskyi Lane
Petrivska Alley
Parkova Road
Naberezhne Highway
Paton Bridge
Volodymyrskyi Descent
Kruhlouniversytetska Str.
Krutyi Descent
Velyka Zhytomyrska Str.
Reitarska Str.
Prorizna Str.
Khreshchatyk Str.
T.Shevchenka Boulevard
B.Khmelnytskoho Str.
M.Hrushevskoho Str.
Instytutska Str.
Lvivska Str.
Shovkovychna Str.
Shovkovychna Str.
Akad. Bohomoltsia Str.
Kiovskyi Descent
P.Skoropadskoho Str.
L.Tolstoho Str.
Basseina Str.
Volodymyrska Str.
Tereshchenkivska Str.
Yaroslaviv Val Str.
Lysenka Str.
Pushkinska Str.
Zankovetskoi Str.
Stanislavskoho Str.
Horodetskoho Str.
Olminska Str.
Kostelna Str.
Mala Zhytomyrska Str.
Mykhailivska Str.
Trokhsviatytelska Str.
Desiatynna Str.
Deshatynnyi Lane
Volodymyrska Str.
Rylskyi Lane
Volodymyrskyi Pass
Striletska Str.
Orzha-Horodnya Str.
Heorhiivskyi Lane
M.Kotsiubynskoho Str.
T.Shevchenka Lane
Ivanovska Str.
Zolotovoritska Str.
Malopidvalna Str.
Bohomolitska Str.
Architect House
Maidan Nezalezhnosti
Ukraina hotel
Ministry of Justice
Khreshchatyk
National Writer's Union
I.Franko Sq.
I.Franko Theatre
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Ivanovska Str.
Zolotovoritska Str.
Malopidvalna Str.
Bohomolitska Str.



Територія, контрольована «майданівцями» (учасників акцій протесту)
Территория, контролированная «майдановцями» (участниками акций протеста)
Territory controlled by *maidanivtsi* (protesters)



Адміністративна / громадська будівля, зайнята «майданівцями»
Административное / общественное здание, занятое «майдановцами»
Government / public building occupied by *maidanivtsi*



Скупчення «майданівців»
Скопление «майдановцев»
Cluster of *maidanivtsi*



Дії «майданівців»
Действия «майдановцев»
Actions of *maidanivtsi*



Парковка «майданівців»
Парковка «майдановцев»
Parking space of *maidanivtsi*



Територія, контрольована підрозділами МВС
Территория, контролированная подразделениями МВД
Territory controlled by *MVS* (Ministry of Internal Affairs) troops



Адміністративна / громадська будівля, контрольована підрозділами МВС
Административное / общественное здание, контролированное подразделениями МВД
Government / public building controlled by *MVS* troops

Кордон підрозділів МВС
Кордон подразделений МВД
Cordon of *MVS* troops



Зосередження підрозділів МВС
Сосредоточение подразделений МВД
Concentration of *MVS* troops



Дії підрозділів МВС
Действия подразделений МВД
Activity of *MVS* troops



Скупчення «антимайданівців» (учасників провладного мітингу)
Скопление «антимайдановцев» (участников провластного митинга)
Cluster of *Anti-maidanivtsi* (members of pro-government meeting)



Наметовий табір
Палаточный лагерь
Tent camp

Барикада
Баррикада
Barricade



Вогняно-димова барикада
Огненно-дымовая баррикада
Fire and smoke barricade



Зона сутичок
Зона столкновений
Zone of clashes



«Йолка»
«Йолка»
Yolka (Christmas tree)

Сцена
Сцена
Stage

Вхід до станції метрополітену
Вход на станцию метрополитена
Entrance to *metro* (subway / underground) station



Зачинена станція метро
Закрытая станция метрополитена
Closed *metro* station



Пам'ятник
Памятник
Monument