

Reference: AL UKR 5/2018

**RESPONSE OF UKRAINIAN STATE AUTHORITIES
on joint communication from Special Procedures**

Questions No. 1, 2

1. According to the Article 2 of the Criminal Code of Ukraine (hereinafter – CCU) committing by a person of a socially dangerous act that has such elements of crime as prescribed by the CCU gives grounds for criminal liability.

Practical application of the CCU provisions, in particular establishing the legal composition of a crime and bringing perpetrators to the criminal liability, is being conducted by the law enforcement agencies within the procedures determined by the Criminal Procedure Code of Ukraine (hereinafter – CPC).

Pursuant to Article 40 of the CPC investigators, in the course of performing their duties in compliance with the requirements of the CPC, are independent in their procedural activities, and any interference therein on the part of persons who have no legitimate authority, shall be forbidden.

Public prosecutor supervises the compliance with the law during pre-trial investigation in the form of providing procedural guidance within a pre-trial investigation (Article 36 (2) of the CPC).

Prosecutor's General Office manages and coordinates activity of all public prosecution bodies to guarantee efficient performance of the public prosecution functions (Article 8 (1) of the Law "On Public Prosecution").

Section 1 of Chapter 26 of the CPC regulates the mechanism of challenging decisions, actions or inactivity of investigator or public prosecutor on the stage of pre-trial investigation.

2. Referring to **Ms. Kateryna Handziuk** case. As at the time of murder she occupied the post of acting Chief of Staff of the Kherson City Council, Investigative Unit of the Police Office in Kherson Region launched a pre-trial investigation of murder.

The pre-trial investigation was launched of a crime under Article 115 (2, p.4, 6, 11, 12) of the CCU on July 31, 2018. In a course of pre-trial investigation police officers notified a suspicion to 5 alleged perpetrators.

On November 5, 2018 the Prosecutor's General Office has transferred the mandate to investigate the crime from the National Police to the Main Investigation Department of the Security Service of Ukraine (criminal proceeding No. 12018230040002816).

The Main Investigation Department of the Security Service of Ukraine is carrying out the pre-trial investigation of the crime so far.

In a course of pre-trial investigation the following individuals were seized and noticed of suspicion:

- on August 19, 2018 citizens of Ukraine ██████████ were noticed of suspicion of committing a criminal offence under Articles 15 (2), 115 ((2), p.4, 12) of the CCU (*classification of the crime: assault to willful murder committed with a special cruelty by a group of persons upon prior conspiracy*), a preventive measure of home arrest was applied to both individuals;

- on August 20, 2018 a citizen of Ukraine Mr. ██████████ was noticed of suspicion of committing criminal offence under Articles 15 (2), 115 ((2), p.4, 12) of the CCU

(classification of the crime: assault to willful murder committed with a special cruelty by a group of persons upon prior conspiracy), a preventive measure of personal commitment was applied to the suspect;

- on August 20, 2018 a citizen of Ukraine ██████████ was re-noticed of suspicion of committing a criminal offence under Articles 27 (3), 115 ((2), p.4, 11, 12) of the CCU (classification of the crime: organizer of a murder committed with a special cruelty, on demand, based on mercenary motives, by a group of persons upon prior conspiracy); that suspect was taken into custody;

- on November 10, 2018 a citizen of Ukraine ██████████ was noticed of suspicion of committing criminal offence under Articles 27 (3), 115 ((2), p.4, 11, 12) of the CCU (classification of the crime: organizer of a murder committed with a special cruelty, on demand, based on mercenary motives, by a group of persons upon prior conspiracy); that suspect was taken into custody;

- on December 4, 2018 a citizen of Ukraine ██████████ was noticed of suspicion of committing criminal offence under Articles 27 (3), 115 ((2), p.4, 11, 12) of the CCU (classification of the crime: organizer of a murder committed with a special cruelty, on demand, based on mercenary motives, by a group of persons upon prior conspiracy); that suspect was taken into custody and put on a wanted list;

- on February 11, 2019 a citizen of Ukraine ██████████ was noticed of suspicion of committing criminal offence under Articles 27 (3), 115 ((2), p.4, 11, 12) of the CCU (classification of the crime: organizer of a murder committed with a special cruelty, on demand, based on mercenary motives, by a group of persons upon prior conspiracy); according to the court's decision the suspect was taken into custody with the right of being released on bail which was applied by the suspect's lawyer (on March 4, 2019 the public prosecutor's office challenged that court's decision and insisted on custody, but the court has rejected the appeal). The suspect is on bail and obliged to periodically show up before an investigator.

The pre-trial investigation is ongoing under the procedural guidance of the General Prosecutor's Office of Ukraine.

On February 28, 2019 during Parliamentary hearings an interim Report of the Parliamentary Temporary Investigative Commission (PTIC) concerning attacks on Ms. K.Handziuk and other public activists was debriefed.

With the view to proceed further investigation of allegations about attacks on Ms. K. Handziuk and other public activists and taking into account the goals affirmed by the Parliamentary Resolution of November 6, 2018 No. 2605, the Parliament decided *to prolong the work of the PTIC for the next three (3) months*. Simultaneously, the Parliament also recommended itself to *inter alia*: 1) strengthen safeguards with regard to forensic experts' independence; 2) ensure conducting of forensic examinations appropriately; 3) amend the CCU by adding the disposition of Article 345-1 (3) with provisions of criminalizing actions prescribed in section (2) of that Article with the element of committing a crime by a group of persons upon prior conspiracy with imprisonment for such actions from 5 to 12 years.

The next report of the PTIC shall be presented no later than on May 14, 2019.

Questions No. 3, 4, 5

Article 21 of the Constitution of Ukraine (hereinafter – Constitution) declares that all people are free and equal in their dignity and rights. Human rights and freedoms shall be inalienable and inviolable.

According to Article 22 of the Constitution, human and citizen rights and freedoms affirmed by this Constitution shall not be exhaustive. The constitutional rights and freedoms shall be guaranteed and shall not be abolished. The content and scope of the

existing rights and freedoms shall not be diminished by an adoption of new laws or by introducing amendments to the effective laws.

Article 24 of the Constitution states that citizens have equal constitutional rights and freedoms and are equal before the law. There shall be no privileges or restrictions based on race, skin colour, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, linguistic or other characteristics.

The Law of Ukraine "On Bar and Advocacy Activity" provides for rights, professional duties and guarantees of advocacy. According to the Article 45 of the Law the authority to protect the rights of lawyers and guarantee advocacy activities is entrusted to the National Association of Advocates of Ukraine, in which the Committee for the Protection of Advocates' Rights and Advocacy Guarantees was established for this purpose.

In order to ensure the guarantees of the advocacy practice provided by the law, the CCU stipulates criminal liability for:

- violation of the right to protection through failure to provide access to a defense lawyer and also any other serious violation of the right of a suspected, accused or defendant to defense, if committed by investigator, prosecutor or judge (Article 374);
- interference with activity of a defense lawyer or a representative of a person impeding the lawful activity of a lawyer or a representative of a person on the provision of legal aid or violation of legal guarantees of their activity and professional secrets (Article 397);
- threats or violence against a defense lawyer or a representative of a person (Article 398);
- willful destruction or impairment of property owned by a defense lawyer or a representative of a person (Article 399);
- trespass against life of a defense lawyer or a representative of a person in connection with their activity related to the provision of legal aid (Article 400).

The Law of Ukraine "On Ensuring the Safety of Persons Involved in Criminal Proceedings" guarantees the right to legal, organizational, technical and other measures aimed at protecting life, housing, health and property of legal defenders from unlawful encroachments.

The legislation of Ukraine in terms of identifying and securing rights of advocates and guarantees of advocacy and responsibility for the violation of such rules complies with international standards.

Investigation of criminal offenses committed against journalists and civic activists is under constant control of the National Police of Ukraine. The National Police of Ukraine takes a set of organizational and practical measures aimed at ensuring the full protection of human rights.

Awareness raising activities about inadmissibility of human rights violations, especially in a realm of professional activity, are carried out permanently among law enforcement officials and civil servants.