

Mandates of the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the independence of judges and lawyers

REFERENCE: UA
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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 27/1 and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. [REDACTED]'s alleged enforced disappearance.

According to the information received:

On 6 March 2015, Mr. [REDACTED], a [REDACTED] national, born on [REDACTED] in [REDACTED], national passport n° [REDACTED], issued on [REDACTED] in the Department of Internal Affairs, Orekhovo-Borisovo Severnoye, Moscow, was allegedly abducted by officers of the Security Service of Ukraine in front of the Ovidiopol District Court of Odessa region.

The source reported that in 2014, Mr. [REDACTED], together with persons associated with him, came to Kharkov in Ukraine and rented an apartment. In June 2014, they went to the town of Karolino-Bugaz in the region of Odessa. On 18 June 2014, Mr. [REDACTED] was allegedly detained in that area by the Security Services of Ukraine of the Odessa region (SBU). After having been charged under article 110 of the Criminal Code of Ukraine (trespass against the territorial integrity and inviolability of Ukraine), Mr. [REDACTED] was placed in a pre-trial detention facility (SIZO) at 11, Lustdorfskaya doroga Street, 65000, in Odessa.

Mr. [REDACTED] was accused of having been looking into recruiting potential combatants for the armed groups of the self-proclaimed Donetsk People's Republic. He was allegedly forced by the SBU to sign a confession in this regard.

At a later stage, Mr. [REDACTED] was transferred from the SIZO detention facility to the Police temporary detention facility (IVS) of the Ovidiopol District, Regional Department of the Ministry of Internal Affairs in Odessa, at 9, Beregovaya Street, Ovidiopol.

On 6 March 2015, the Ovidiopol District Court of the Odessa region passed a sentence in criminal case № [REDACTED], based on criminal proceedings registered in the Unified Register of Pre-Trial Investigations under number № [REDACTED] of 18 June 2014, with regard to Mr. [REDACTED] indictment. Mr. [REDACTED] had been indicted for breaching article 110(1) of the Criminal Code of Ukraine – “trespass against territorial integrity and inviolability of Ukraine”.

The sentence was reportedly issued on the basis of an alleged agreement on recognition of guilt made on 6 March 2015 between the senior Prosecutor of the Department of the Prosecutor's Office of the Odessa region and Mr. [REDACTED]. According to the agreement, the sentence imposed was deprivation of liberty for a term of three years and three months. Pursuant to articles 75 and 76 of the Criminal Code of Ukraine, Mr. [REDACTED] was exempted from serving his sentence at the condition not to commit another crime during two years of probation and not to leave Ukraine as a place of permanent residence without permission from the criminal-executive inspection. His probation was due to start from the moment the sentence was pronounced by the court.

Consequently, Mr. [REDACTED] was released from custody in the court room. Immediately after the end of the court hearing, Mr. [REDACTED] was handed a copy of the sentence and his Russian passport was returned to him. Mr. [REDACTED] was then allegedly invited by convoy officers to follow them to the IVS premises to receive his personal belongings.

However, when Mr. [REDACTED] was exiting the premises of the Ovidiopol District Court of the Odessa region located at 9, Beregovaya Street, and was on his way to the district Police Department located next door, a group of unidentified individuals allegedly violently approached Mr. [REDACTED] and, without explanations, took him to a dark blue minibus of the brand ‘Volkswagen Transporter’ and with the license plate [REDACTED]. One of the unidentified individual reportedly shouted to the bystanders to stay where they were and added that they were officers of the Security Services of Ukraine of the Odessa region. Yet, they did not show any identification documents. After that, the minibus

rapidly left the scene. No messages or phone calls have been received from Mr. [REDACTED] since then. It is further reported that the aforementioned minibus is the same vehicle that had been used by the officers of the Odessa Regional Department of the Security Services of Ukraine when they reportedly apprehended the Head of the Military Commissariat of the Odessa region.

After Mr. [REDACTED]'s alleged abduction on 11 March 2015, a request was filed before the Odessa Regional Department of the Security Services of Ukraine with reference number [REDACTED]. The request was asking if SBU officers had detained Mr. [REDACTED]. On 20 March 2015, an answer was received under reference № [REDACTED], stating that no actions had been taken by the SBU with regards to Mr. [REDACTED].

On 3 April 2015, a report on Mr. [REDACTED]'s enforced disappearance was filed before the Odessa Regional Department of the Security Services of Ukraine. An answer was received on 22 April 2015 under reference [REDACTED], stating that the report had been sent to the Prosecutor's Office of the Odessa region, as the issues raised in the report were not of the competence of the SBU.

On 16 April 2015, a complaint was filed before the Primorskiy District Court of Odessa concerning the inaction of the State officials of the Odessa Regional Department of the Security Services of Ukraine. The court was requested to recognize the inaction of the SBU and to oblige them to register the case in the Unified Register of Pre-Trial Investigations. On 27 April 2015, the court granted the motion and ruled to register the information provided in the Unified Register of Pre-Trial Investigations (case [REDACTED]). On 5 May 2015, the SBU registered the case in the Unified Register and a criminal case was launched under article 146/2 of the Criminal Code of Ukraine (illegal deprivation of liberty or abduction) – case [REDACTED]. On 22 May 2015, a person associated with Mr. [REDACTED] was informed by the Prosecutor's Office of the Odessa region that the Investigative Department of the Odessa Regional Department of the Ministry of Internal Affairs was investigating the case, and that the pre-trial investigation was on-going ([REDACTED]).

On 6 July 2015, a complaint was sent to the Ukrainian Parliament Commissioner for Human Rights. The Ombudsperson was requested to launch proceedings on the illegal deprivation of liberty of Mr. [REDACTED] since 6 March 2015; and conduct an inspection of the pre-trial detention facilities (SIZO) of Kharkov, Zaporozh'ye and Odessa without informing the institutions in advance.

A number of reports were also presented to the Odessa office of the UN Human Rights Monitoring Mission in Ukraine.

It is further reported that two of the convoy officers in charge of Mr. [REDACTED] were interrogated in the context of the criminal investigation on his alleged abduction. In addition, a member of an armed group of the self-proclaimed 'Donetsk People's Republic', who was part of an exchange process between the self-proclaimed 'Donetsk People's Republic' and the Government of Ukraine under the Minsk Agreement, allegedly declared that he had spent two months in illegal detention in a cell in a building of the Kharkov Department of the Security Services of Ukraine with Mr. [REDACTED].

Based on the above information, it is alleged that Mr. [REDACTED] might have been abducted to be transferred to either the self-proclaimed 'Donetsk people's Republic' or the self-proclaimed 'Lugansk People's Republic' as part of the exchange process. It is further alleged that individuals detained to be 'exchanged' under such exchange processes are systematically kept in illegal and incommunicado detention in the premises of the Kharkov Department of the Security Services of Ukraine.

At the time of the present communication, the fate and whereabouts of Mr. [REDACTED] remain unknown.

Grave concern is expressed about the alleged enforced disappearance of Mr. [REDACTED]. Further concern is expressed about his physical and mental integrity as he is allegedly being kept in incommunicado detention, outside of the purview of the law, and thereby at heightened risk of torture or other ill-treatment.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In relation to the allegation that the fate and whereabouts of Mr. [REDACTED] is currently unknown, we would like to draw your Excellency's Government attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance. In particular, we would like to recall the prohibition to practice, permit or tolerate enforced disappearance (article 2); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (article 3); that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7); the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention and the obligation to make available accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest (article 10); and the

obligation to maintain in every place of detention an official up-to-date register of detained persons (article 12).

The above-mentioned allegations also appear to be in contravention with Mr. [REDACTED] right to an effective remedy as enshrined, inter alia, in the International Covenant on Civil and Political Rights, ratified by your Excellency's Government on 12 November 1973, and to have access to a lawyer to protect and establish his rights, as enshrined, inter alia, in the Basic Principles on the Role of Lawyers.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and comment which you may have on the above mentioned allegations.
2. Please provide detailed information concerning the fate and whereabouts of Mr. [REDACTED].
3. Please provide detailed information, and where available, the results of any investigation, judicial or other inquiries carried out in relation to the above mentioned allegations of enforced disappearance. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information relative to the measures taken to ensure the physical and psychological integrity of Mr. [REDACTED]. Please indicate in particular whether he has access to adequate medical care and to legal counsel.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Ariel Dulitzky
Chair-Rapporteur of the Working Group on Enforced or Involuntary
Disappearances

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers