

Mandate of the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
AL UKR 2/2019

31 May 2019

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 35/11.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning allegations regarding the threats received by judge **Viktoriia Prykhodko** of the Marinskyi district court in the Donetsk region, in relation to a court ruling, which would be in contravention of international human rights standards relating to the independence of the judiciary.

According to the information received:

On 20 September 2017, Roman Dzhumaiev was arrested and placed in pre-trial detention for his alleged membership of an armed groups of the self-proclaimed 'Donetsk people's republic'.

On 5 January 2018, Marinskyi district court registered the case and prosecuted Mr. Dzhumaiev under article 258-3 of the Criminal Code of Ukraine (membership of a terrorist group or terrorist organization). Ms Prykhodko was selected to sit in the panel of three judges to hear the case.

The Court extended the pre-trial detention as measure of restraint until 3 May 2018. On that date, the panel of judges denied the prosecutor's motion to extend detention and applied a less strict measure of restraint in the form of "round-the-clock" house arrest. The court referred to failure of prosecution to prove reasonableness and necessity for continued pre-trial detention of Mr. Dzhumaiev.

Posts criticizing the lawfulness of the decision were published in Facebook. Some of the posts publications allegedly contained offensive language against the panel of judges and the defendant.

On 3 July 2018, when the sixty days of house arrest expired, the defendant was freed, given that the prosecutor did not motion for its extension or for the application of another measure of restraint.

On 13 August 2018, the court denied a motion from the prosecutor to remand the defendant in custody anew. The court stated that the prosecutor had not proven the existence of risks necessitating this strict measure of restraint. Again, this decision triggered a wave of criticism in social media, including articles in media outlets with headlines such as: "Marinskyi district court released a terrorist".

On 13 December 2018, another court ruled to remand Mr. Dzhumaiev in custody within a separate criminal investigation – for the alleged attack on a police officer.

On 17 December, a Marinskyi district court granted the prosecutor’s motion to remand him in custody in the trial for his alleged membership of armed groups of the self-proclaimed ‘Donetsk people’s republic’. On 13 February 2019, the pre-trial detention was extended until 7 April 2019.

On 21 March 2019, the Marinskyi district court was expected to hold the hearing on the merits in the criminal case mentioned in the previous paragraph, alongside the extension of pre-trial detention for Mr. Dzhumaiev. However, due to a delay in the hearing of another case by judge Prykhodko, it had to be postponed. Two activists who had come to follow the trial went to the judge Prykhodko’s office, which she used as a deliberations room. One of them shouted at her complaining for the postponement and asked for information about the status of the case; while filming the situation in videos. Judge Prykhodko repeatedly asked them to leave her office and advised them to address their inquiries to the presiding judge. The activists continued verbally abusing and intimidating her; and asked the most severe punishment for Mr. Dzhumaiev. The judge feared she could be physically abused.

Considering that the interaction with the activists took place outside the courtroom without presence of the parties to the proceeding, and the attempts to pressure her on the case, judge Prykhodko submitted her recusal.

The activists published in Facebook posts and uploaded the videos of the incident with the judge. The posts got many comments from different users, some of them with offensive language towards the judges in Dzhumaiev’s criminal case and even calls for physical violence against them, including judge Prykhodko. In addition, some media outlets published articles based on the aforementioned posts, with headlines such as “Marinskyi district court released the terrorist/murderer of Ukrainian soldiers”.

Without prejudging the accuracy of the information received, concern is expressed at the alleged threats and intimidation suffered by judge Prykhodko and the pressure to influence the outcome of the sentence in the case of Mr. Dzhumaiev. If confirmed, the facts of the case would disclose a serious breach of the principles of judicial independence.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and comments which you may have on the above mentioned allegations.
2. Please provide detailed information on the measures taken to ensure the safety and integrity of judge Prykhodko.
3. Please provide detailed information on the measures taken to ensure that the judges of the trial of Mr. Dzhumaiev can exercise their duties without any interference, pressure, threat or intimidation of any kind.
4. Please provide detailed information on the guarantees put in place by Ukraine to protect and promote judicial independence; including legal means that judges may use to defend themselves against any threat to their independence.

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I 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(s) responsible for the alleged violations.

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

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to articles 9 and 14, of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Ukraine on 12 November 1973, which states that everyone has the right to liberty and security of person and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.

In its General Comment No. 32 (2007), the Human Rights Committee observed that article 14 requires States to adopt appropriate measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. It also raised that States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. (para. 19).

The principle of the independence of the judiciary has also been enshrined in a large number of United Nations legal instruments, including the Basic Principles on the Independence of the Judiciary. The Principles provide, inter alia, that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1); that judges shall decide matters before them impartially (...) without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason (principle 2); and that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision (principle 4).