

Mandates of the Working Group on Arbitrary Detention, and the Special Rapporteur on the independence of judges and lawyers

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention, and as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 24/7 and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary detention of Mr. Evgenii Mefiodov, lack of due process and fair trial guarantees in the criminal proceedings against him, threats against his defence lawyers, and serious interference, pressures and threats against the judges involved in the various proceedings against him.

According to the information received:

On 2 May 2014, violent clashes took place in Odesa between members of the political opposition 'pro-federalism' movement, i.e. those inspired by the establishment of a new Ukrainian federal State with larger autonomy of the regions and respect for the rights of the Russian-speaking Ukrainian population, and 'pro-unity' supporters, i.e. those who desire to maintain a unitary Ukrainian State. The main clashes occurred on Hretska Street in the city centre, where six people were killed (four 'pro-federalism' supporters and two 'pro-unity' supporters), and in Kulykove Pole square, where 42 'pro-federalism' supporters died inside the Trade Union Building, which was set on fire allegedly due to Molotov cocktails thrown by both sides (11 people died after they jumped out of the windows of the burning building and 31 died of suffocation and burns inside the building). Other 'pro-federalism' supporters surrounded by 'pro-unity' activists in the Trade Union Building were severely injured.

On the same day, Mr. Evgenii Mefiodov, a citizen of the Russian Federation born in 1983, was arrested by the national police at the Trade Union Building following the clashes. He was first brought to the police station of Odesa city, but soon after, due to his poor health condition (he suffered from both burns and pneumonia), he was transferred to Odesa City Clinical Hospital No. 9, where he was hospitalized under police surveillance until 5 May 2014.

On 5 May 2014, Mr. Mefiodov was transferred from the hospital back to the police station of Odesa city. On 6 May 2014, he was officially charged with involvement in and perpetration of mass disorder under Article 294 of the Criminal Code. His detention from 2 May to 5 May 2014 was not officially recorded. During that period, he was not provided with access to legal counsel; and neither his family nor the consulate of the Russian Federation were notified of his arrest. On the same day, the Primorskyi District Court of Odesa decided to place Mr. Mefiodov in remand detention at the Odesa pre-trial detention centre. One of the main reasons cited to keep him in pre-trial detention was his nationality.

In September 2014, the police investigation into the events of 2 May 2014 was split into several independent criminal proceedings (the three main proceedings are those focusing on the violence that took place on Hretska Street; on the violence at the Trade Union Building in Kulykove Pole square; and on a single case against a ‘pro-unity’ activist charged with intentional homicide). Mr. Mefiodov, together with other ‘pro-federalism’ supporters, was charged with involvement in and perpetration of mass disorder during the clashes on Hretska Street.

On 24 September 2014, the pre-trial investigation into the mass riots on Hretska Street was completed. Out of the 20 ‘pro-federalism’ supporters accused in this case, 10 individuals, including Mr. Mefiodov, had been held in pre-trial custody since May 2014. Despite numerous appeals to release the defendants on bail, their detention had been repeatedly extended by the court upon request of the prosecution. In August-September 2015, five of these 10 detainees were released by the court and placed under house arrest. The detention of the remaining defendants, including Mr. Mefiodov, was extended by the Malynovskyi District Court of Odesa, whose judges were allegedly under high political pressure not to release Mr. Mefiodov and the other four detainees.

On 4 November 2015, the Council of Europe International Advisory Panel on Ukraine presented its report on the investigations of the events of 2 May 2014 in Odesa. The Panel underlined numerous human rights violations during the investigation stage and court proceedings. In particular, the International Advisory Panel noted with concern the lack of individualised charges against the ‘pro-federalism’ defendants, as well as significant delays at the preliminary court hearing stage. Indeed, the indictment of 20 ‘pro-federalism’ supporters was filed before the court in November 2014, but hearings on the merits only commenced at the end of June 2015.

On 27 November 2015, the Malynovskyi District Court granted release on bail to five ‘pro-federalism’ detainees, including Mr. Mefiodov. It is reported that ‘pro-

unity' supporters immediately pressured the prosecution to appeal this decision, in violation of the Criminal Procedural Code. Approximately 50 'pro-unity' supporters then blocked the judge of the Court of Appeals of the Odesa region in his office, urging him to grant the appeal requested by the prosecution against the release on bail of the five defendants. On the same day, after 'pro-unity' supporters wearing masks and camouflage clothing met with them, the panel of judges of the Malynovskyi District Court signed letters of resignation (these resignations were subsequently not approved by the Council of Judges of Ukraine). The 'pro-unity' supporters then went to the pre-trial detention facility and blocked the main entrance, searching all departing vehicles to prevent the possible release on bail of 'pro-federalism' detainees.

On 4 December 2015, the Malynovskyi District Court reconsidered its previous decision and cancelled the release on bail of all five detainees, in violation of Ukrainian procedural law. The panel of judges also sent letters to the Council of Judges asking them to accept their resignation to no avail. The prosecutor's office of Odesa has reportedly opened an investigation into this instance of judicial interference. The detention of Mr. Mefiodov was extended several times after that event.

On 27 May 2016, the panel of judges of the Malynovskyi District Court ruled to release Mr. Mefiodov from pre-trial custody to house arrest. Immediately after the decision, the courtroom and the courtyard of the court house were blocked by 'pro-unity' supporters. Police forces secured the court and cordoned the 'pro-unity' supporters out of the building. The 'pro-unity' supporters then blocked all entrances to the court, trapping the 'pro-federalism' defendants as well as several of their lawyers inside, and searched all departing vehicles to prevent the release of Mr. Mefiodov.

At 5 p.m. on the same day, Mr. Mefiodov was charged with violating Article 129 of the Criminal Code (threat to kill) in a new criminal investigation. He was re-arrested under Article 208 of the Criminal Procedure Code (apprehension by a competent official without a court order) and transferred to the Odesa police temporary detention centre. After this, 'pro-unity' supporters unblocked the court.

According to the criminal case materials, on 26 May 2016 at 4 p.m., Mr. Mefiodov had allegedly sent a message via Viber (an Internet messenger) to the main prosecution witness testifying against the 'pro-federalism' supporters in the Hretska Street criminal case, threatening to kill him.

On 29 May 2016, the Kyivskyi District Court of Odesa considered the police's motion to place Mr. Mefiodov in remand detention based on the newly filed charges. During the hearing, the police reportedly failed to present any credible

evidence of reasonable suspicion against Mr. Mefiodov. Furthermore, the investigator informed the judge that the alleged victim had not shown the message containing the supposed threat and had since deleted it. Mr. Mefiodov's defence underlined that at 4 p.m. on 26 May 2016, Mr. Mefiodov was unable to use any digital device because he was in the courtroom of the Malynovskyi District Court in a special box for detainees under surveillance of National Guards and CCTVs. The judge of the Kyivskyi District Court nevertheless ruled that Mr. Mefiodov should be remanded in custody for an additional 60 days.

On 7 June 2016, the Court of Appeals for the Odesa region considered an appeal regarding the new criminal case against Mr. Mefiodov (threat to kill under Article 129 of the Criminal Code). After the judges announced the release of Mr. Mefiodov due to lack of grounds for his arrest, approximately 40 'pro-unity' supporters blocked the entire floor of the court as well as the entrance to the courtroom. 'Pro-unity' supporters accused the panel of judges of treason, threatened them with violence and warned that Mr. Mefiodov would be "torn to ribbons" if released. After being blocked for several hours in the courtroom, Mr. Mefiodov was put into administrative detention as a sanction for allegedly using explicit language in the courtroom. None of the 'pro-unity' activists present in and around the courtroom were arrested or sanctioned. Law enforcement presence was reportedly insufficient and ineffective.

Following his new arrest, Mr. Mefiodov was taken to the police temporary detention centre, where officers refused to admit him as they were reportedly not presented with the required procedural documents. As a result, Mr. Mefiodov was sent to the Odesa pre-trial detention centre without any procedural documents.

On 8 June 2016, the Malynovskyi District Court considered the administrative offence under which Mr. Mefiodov was arrested in the courtroom of the Court of Appeals for the Odesa region the day before. The 'pro-unity' supporters, who had blocked the courtroom of the Court of Appeals were called as witnesses for the prosecution and testified against the defendant. The judge found Mr. Mefiodov guilty of the administrative offence and ruled that he be placed in custody for 2 days of administrative detention.

On the same day, the Prymorskyi District Court considered a request of the prosecution in the criminal case on the alleged threat to kill to detain Mr. Mefiodov in remand custody instead of under house arrest on the basis of newly emerged circumstances. The new circumstances provided by the prosecution to the court were the testimonies that 'pro-unity' supporters had provided in the administrative case against Mr. Mefiodov before the Malynovskyi District Court. In these testimonies, 'pro-unity' supporters alleged that, during the court hearing of 7 June before the Court of Appeals, they heard Mr. Mefiodov threaten the main

prosecution witness in the Hretska Street criminal case. The judge ruled in favour of the prosecution's request, placing Mr. Mefiodov in pre-trial detention until 26 July 2016.

On 22 June, the Court of Appeals for the Odesa region considered an appeal against the decision of the Prymorskyi District Court filed by Mr. Mefiodov's lawyers. Mr. Mefiodov was not brought to the court for that hearing. 'Pro-unity' supporters, some of whom were wearing military uniform, were present both around the court building and inside the courtroom during that hearing. They openly threatened Mr. Mefiodov's lawyers and commented on their pleading before the panel of judges. The lawyers provided the court with written and video evidence to show the groundless nature of the charges of threat to kill. Furthermore, they underlined that until that day, no police investigator had questioned the alleged victim and no evidence had been discovered to prove the threat to kill. The panel of judges nevertheless refused to consider the evidence presented and, after a discussion that lasted about 10 minutes in the deliberation room, they upheld the decision of the Prymorskyi District Court. Police presence around the court and inside the courtroom was reportedly insufficient.

On 30 June, during a hearing, the prosecution filed a motion asking for the removal of the panel of judges of the Malynovskyi District Court. The motion cited criminal investigations launched against the panel of judges following their allegedly unlawful decision of 27 May to release Mr. Mefiodov from pre-trial detention and place him under house arrest. The panel of judges did not grant the motion and continued hearing the merits of the case.

Mr. Mefiodov is currently held at the pre-trial detention centre No. 21 (SIZO) in Odesa.

We express serious concern about the lack of observance for due process and fair trial guarantees in the criminal proceedings against Mr. Mefiodov. We express further grave concerns with regards to the reported interference, pressures and threats exerted against members of the judiciary, as well as threats expressed against Mr. Mefiodov's lawyers, by supporters of the 'pro-unity' movement and the lack of adequate protection and response from the authorities. Finally, we are concerned that, under the current circumstances, the continued detention of Mr. Mefiodov may be arbitrary.

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 described above.

In particular, we would like to remind your Excellency's government of articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified on 12

November 1973. According to article 9, anyone detained on a criminal charge shall be entitled to trial within a reasonable time or to release. Article 14 in turns stipulates that everyone shall be equal before the courts and entitled to a fair and public hearing by a competent, independent and impartial tribunal, and that in the determination of any criminal charges against him everyone shall be tried without undue delay.

We would further like to remind your Excellency's government of the Basic Principles on the Independence of the Judiciary, which clearly state that the independence of the judiciary shall be guaranteed by the State and that it is the duty of all governmental and other institutions to respect and observe such independence (see in particular principle 1). Principle 2 of the Basic Principles stipulates that the judiciary shall decide matters before them impartially without any restrictions, improper influences, inducements, pressures, threats or interferences and principle 4 that there shall not be any inappropriate or unwarranted interference with the judicial process. Moreover, according to principle 6, the judiciary must ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

We would also like refer to the Basic Principles on the Role of Lawyers, which stipulate, inter alia, that governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (principle 16); and that where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities (principle 17).

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 persons 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 any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on the status of the various criminal proceedings pending against Mr. Mefiodov. Please explain in particular the reasons behind the delay in trying Mr. Mefiodov in the Hretska street criminal case.

3. Please provide detailed information on the measures taken to protect the judges involved in the criminal proceedings against Mr. Mefiodov from interference, pressures, threats or any other restrictions. If no measures have been taken, please explain why. Please also provide information on the measures adopted by the authorities to ensure the independence of the judiciary in Ukraine, and in Odesa more particularly.

4. Please provide information on the measures taken to protect the security of Mefiodov's lawyers. If no measures have been taken, please explain why. Please also provide information on the measures adopted by the authorities to ensure the independence of the legal profession in Ukraine, and in Odesa more particularly.

5. Please provide information on the police protection provided to secure court premises in Odesa, as well as all protect those participating in court proceedings, including judges, prosecutors, lawyers, court officials, defendants and witnesses. Please explain in particular why the police could not prevent the occupation and blockade of court premises in the cases described above.

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.

José Guevara
Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers