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Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its seventy-sixth session, 22-26 August 2016****Opinion No. 37/2016 concerning Maxim Sakauov, Evgeniy Mefedov, Volodymyr Zibnytskyy, Pavlo Kovshov, Oleksandr Sukhanov, Vladislav Ilnytskyy, Sergey Korchynskyy, Vladislav Romanyuk, Oleksandr Dzubenko and Sergey Doljenkov and others (Ukraine)¹**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 27 May 2015 the Working Group transmitted a communication to the Government of Ukraine concerning Maxim Sakauov, Evgeniy Mefedov, Volodymyr Zibnytskyy, Pavlo Kovshov, Oleksandr Sukhanov, Vladislav Ilnytskyy, Sergey Korchynskyy, Vladislav Romanyuk, Oleksandr Dzubenko and Sergey Doljenkov and others. The Government replied to the communication on 30 July 2015. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);

¹ In accordance with rule 5 of the methods of work, Vladimir Tochilovsky did not participate in the discussion of the present case.

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation or disability or other status, that aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. Messrs Maxim Sakauov (born in 1976), Evgeniy Mefedov (born in 1983), Volodymyr Zibnytsky (born in 1983), Pavlo Kovshov (born in 1986), Oleksandr Sukhanov (born in 1975), Vladislav Ilnytsky (born in 1995), Sergey Korchynskyy (born in 1973), Vladislav Romanyuk (born in 1995), Oleksandr Dzubenko (born in 1986) and Sergey Doljenkov (born in 1988) are currently held in police custody pending trial in the main pre-trial detention centre (SIZO) in Odesa. All of them, except Mr. Mefedov, citizens of Ukraine. Mr. Mefedov is a citizen of Russian Federation. 10 other people are being charged in that case, but they are not detained. They are all members of opposition 'pro-federalism' movement, who have been charged with mass riots under Section 294 of the Penal Code of Ukraine (PCU). Mr. Sukhanov has been also charged with unlawful possession of weapons, ammunition or explosives under Section 263 of the PCU. There are 20 defendants altogether in the same criminal case.

5. On 2 May 2014, 48 people were killed, and about 247 were injured as a result of clashes during massive disorder in Odesa between members of 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 respecting the rights of the Russian-speaking Ukrainian population, and 'pro-unity' supporters, i.e. those desired to maintain a unitary Ukrainian state. Reportedly, the main clashes occurred on Grecheskaya Street in the centre of the city, where 6 people were killed (4 'pro-federalism' supporters and 2 'pro-unity' supporters) and on Kulikovo square, where 42 'pro-federalism' supporters were killed inside of the Trade Unions House, which was set ablaze allegedly due to Molotov cocktails were thrown from both sides. Reportedly, 11 deaths occurred as a result of people jumping out of the window (2 died in the hospital), and 31 died of suffocation and burns inside the same building. Many more 'pro-federalism' activists, who were besieged by their opponents in the Trade Unions House, were severely injured.

6. The source reports that the casualties in Odesa could have been prevented that day. However, police officers, who were present at the scene, failed to act with due diligence, and to take effective action to prevent or contain the violence, in particular, in the vicinity and inside the Trade Unions House, reportedly because police did not receive any formal order to intervene. Also, a fire brigade, which was based at a distance of 650 metres from

the Trade Unions House, only arrived 40 minutes after receiving the first phone call about the fire.

7. Four official investigations have been initiated to look into the incidents of 2 May in Odesa: the Ministry of Internal Affairs of Ukraine (MIA) investigating mass riots in the city centre and the Trade Unions House; the General Prosecutor's Office of Ukraine opened criminal cases against several high-ranking police officers for negligence; Ombudsperson evaluated the violation of human rights by law enforcement agents during the mass riots; and the Parliament carried out a comprehensive investigation. However, there is no measurable result into the investigation on police and fire brigade negligence.

8. According to the source, prior to the 2 May 2014 violence, an opposition movement in favour of federalism emerged in Odesa in the wake of the Euromaidan events in Kiev that resulted in ousting of the President Yanukovich in February 2014. The 'pro-federalism' movement has been called anti-maidan by its opponents and local authorities because it opposed the use of the Euromaidan movement by nationalist Ukrainians against the country's Russian-speaking Ukrainian minority. Apparently, the anti-maidan movement emerged after the derogation of the 2012 Law on the Principles of the State Language Policy. Although vetoed in practice, those steps created anxiety in the South-East regions of Ukraine, as Russian speaking minorities were concerned that new amendments would weaken their linguistic rights. This fostered a support of population to the 'pro-federalism' movement in Odesa and other regions in the South East of Ukraine.

9. The source asserts that from February to April 2014, members of the 'pro-federalism' movement organised demonstrations every Sunday and set up a permanent tent camp at Kulikovo square in Odesa, opposite the Trade Unions House. They organised the camp's protection in a paramilitary manner. The authorities in Odesa and Kiev sought to negotiate an agreement whereby the camp would be dismantled and moved to another area, outside the city centre by 9 May 2014, before the annual commemoration of World War II. "Odesskaya Druzina", a para-military wing of 'pro-federalism' movement, which was organised for the protection of the camp in a Euromaidan manner, agreed and left for another location outside the city, but the majority of activists remained at Kulikovo square.

10. On 2 May 2014, a football match between clubs Metalist Kharkiv and Chernomorets Odesa was planned to take place in Odesa. Early in the morning of 2 May, at least 600 football fans arrived from Kharkiv to Odesa. Football fans from both teams are known to have strong 'pro-unity' sympathies. A pre-match rally for "United Ukraine" had been planned for 3.00 p.m. on Sobornaya square and gathered, at least, 2,000 people, including supporters of the two football teams, "Right Sector" and "Svoboda" activists, members of so-called "self-defence" units, and other 'pro-unity' supporters.

11. Reportedly, as the 'pro-unity' rally was perceived as radical. The use of force was decided to remove the camp on Kulikovo square. The 'pro-federalism' supporters, in anticipation of the demolition of the tents, decided to counter it. According to the source, both sides were prepared for confrontation. 'Pro-unity' supporters had brought masks, helmets, axes, wooden sticks, non-lethal guns and fire-arms. At around 3:00 p.m, about 200 activists of "Odesskaya Druzina", similarly equipped in para-military gear, attacked the rally in the vicinity of Grecheskaya Street in the centre of the city.

12. The clashes there lasted for several hours and resulted in the killing of six persons (two 'pro-unity' and four 'pro-federalism' protesters) and numerous injuries. The 'pro-federalism' supporters were apparently outnumbered and out-forced and dispersed. 47 'pro-federalism' activists took refuge in the "Afina" shopping centre. They were taken away for protection reasons by Police Special Forces "SOKOL" and transferred to two police stations outside Odesa (Ovidiopol and Bilhorod-Dnistrovkyi) where they were detained and questioned.

13. Having defeated the ‘pro-federalism’ activists on Grecheskaya Street, the ‘pro-unity’ supporters moved to the Kulikovo square at the end of the afternoon; the violent confrontation continued late in the night. ‘Pro-unity’ activists, supported by the extremist paramilitary militias burned the camp tents and chased away ‘pro-federalism’ campers. Nevertheless, several dozen of them sought refuge in, and barricaded themselves into, the Trade Unions House. The attackers and defenders threw Molotov cocktails into and from the building setting it ablaze. Some of the ‘pro-federalism’ activists escaped from the building in flames, but were caught and beaten by the attackers. Altogether, 42 ‘pro-federalism’ supporters died in the incident, either from jumping from the windows (some of them were beaten, apparently to death, after they reached the ground) or from burns and smoke intoxication or suffocation. These are official figures, based on official autopsies, which have been questioned.

14. On 2 May 2014, the Odesa Regional Police Investigation Department of MIA launched a criminal investigation into the incidents of mass riots, violence and significant loss of life in Odesa that occurred the same day. On 6 May 2014, the responsibility for the investigation was transferred to the Main Investigation Department of the MIA in Kyiv.

15. The source reports that on 2 May 2014, 47 ‘pro-federalism’ activists were detained by police agents. For 48 hours they were not provided with food or water. On 4 May 2014, they were transferred to Vinnitsa police station (424 km from Odesa). During the transfer, which lasted for 12 hours, they received neither food nor water, nor were they allowed to use toilet facilities. Allegedly, they had to urinate in the detainees van. Upon arrival to Ovidiopol and Bilhorod-Dnistrovskiy Police Stations, medical care was not provided to those among the 47 detainees who required such assistance due to illness and injuries.

16. On 6 May 2014, the video court hearings of the ‘pro-federalism’ activists were organised with the Primorsky District Court of Odesa. All were charged with commission of offences under Section 294 of the PCU. According to the court’s decisions related to 47 detainees, 14 were placed in the Vinnitsa pre-trial detention centre. Four of them, after appealing the court decision, were placed under house arrest and have since reportedly returned to Odesa. 33 of the 47 individuals originally arrested were placed under house arrest as of 10 June 2014.

17. In September 2014, the MIA’s investigation into the 2 May 2014 violence in Odesa was split into several criminal proceedings: 1) *on mass riots on Grecheskaya Street in the city centre*, 2) *on mass riots at the Trade Unions House (Kulikovo square)*, and 3) *a single case against a ‘pro-unity’ activist charged with intentional homicide*.

18. *Mass riots on Grecheskaya Street in the city centre*: On 2 May 2014, in the city centre, 47 ‘pro-federalism’ activists who took refuge in the “Afina” shopping centre were arrested by Police Special Forces. Following the court decisions, 10 were taken into custody, while 37 were placed under house arrest. According to Section 181 of the Criminal Procedure Code of Ukraine (CPC), house arrest as a preventive measure cannot last more than 6 months. According to Section 197(3)(2) of the CPC, the total duration of holding a person under custody in the course of pre-trial investigation shall not exceed 12 months.

19. On 6 May 2014, Mr. Sergey Doljenkov (1988), the Head of the Odesskaya Druzhina and one of the leaders of the ‘pro-federalism’ movement, was arrested in Odesa and transferred to the Kyiv SIZO. He was charged with mass riots under Section 294 PCU and placed under custody as a measure of restraint.

20. On 24 September 2014, the pre-trial investigation into the mass riots in the city centre was completed: 21 ‘pro-federalism’ activists were charged with mass riots under Section 294 PCU, and 13 suspects were put on a wanted list. An investigation against one of them was split into a separate proceeding due to security reasons. Out of 20 accused activists, 9 people have been in custody since 2 May 2014, including Messrs Sakauov,

Mefedov, Zibnytskyy, Kovshov, Sukhanov, Ilnytskyy, Korchynskyy, Romanyuk, and Dzubenko. Mr. Doljenkov is in police custody since 6 May 2014. Despite a numerous appeals of the defence lawyers to release the defendants, their detention has been extended by the court upon request of the prosecutor for several times. The latest extension for additional 60 days of detention was made on 23 May 2015 by the Malinovskiy district court in Odesa. The source reports that all ten detainees continued to be kept in the absence of minimum detention conditions.

21. In November 2014, the indictment was transmitted to the Primorsky district court in Odesa for trial. However, the jurisdiction was moved to the Malinovskiy district court in Odesa. On 16 January 2015, during preliminary court hearings by the Malynovskyi District Court of Odesa, lawyers for the defendants (mostly 'pro-federalism' activists) drew attention to human rights violations and procedural omissions contained in the indictment: failure to provide Russian Federation citizens with Russian translation of indictment; failure to specify the action of each accused during mass riots; failure to indicate information on conducted investigative actions, and incorrect personal data of participants of the trial. On 2 February 2015, the panel of judges of the Malinovskiy district court returned the case to the prosecutor office for additional investigation to correct the errors made during pre-trial investigation.

22. On 25 March 2015, the General Prosecutor's office re-submitted a corrected indictment against 20 'pro-federalism' activists regarding organising mass riots in the city centre to the Malynovskyi District Court. On 27 April 2015, during the preliminary hearings, due to the numerous omissions and violations of the CPC provisions, the Malynovskyi District Court ruled for the second time to return the indictment to the General Prosecutor's office for revision and correction. The source asserts that notwithstanding its own findings about violations of the due process standards by the prosecutor office, the Malinovskiy district court failed to release the detainees upon its two rulings to return the case for additional investigation.

23. On 14 May 2015, upon prosecutor's appeal, the Appellate Court of Odesa region overruled the 27 April 2015 decision of the Malinovskiy district court and ordered it to resume its consideration. On 23 May 2015, the trial panel of the Malinovskiy district court completed the preliminary hearings and decided to schedule the first trial hearing on 29 May 2015.

24. Furthermore, the source submits that, in January 2015, the Malinovskiy district court began a separate proceeding under Section 294 CPU against a 'pro-federalism' activist, who was also arrested in the 'Afina' shopping centre. His criminal case was separated for security reasons, because of his testimony against other 'pro-federalism' defendants. His indictment was also returned to the General Prosecutor Office for correction. It was not clear though if that defendant/witness is in detention.

25. *Mass riots at the Trade Unions House:* Late in the evening of 2 May 2014, 67 'pro-federalism' activists were arrested at the Trade Unions House and transferred to the Odesa City Police Station, where they were detained for two days. On 2 and 3 May, all detainees were charged with intentional homicide and mass riot under Section 115 and 294 of the CPU respectively. On 4 May 2014, at 5.00 p.m., the Odesa City Police Station was stormed by relatives and supporters of the 'pro-federalism' detainees. All of the 67 detainees were released by police. It was not clear, however, whether the charges are dropped against them.

26. On 22 April 2015, the First Deputy Prosecutor General of Ukraine reported that the investigation found no evidence of use of any toxic gases at the Trade Unions House. He also informed that no evidence was found that there was an intentional arson attack, or that it was planned by someone. According to him, the fire started from the inside. Allegedly,

people who were inside threw a Molotov cocktail in order to prevent their opponents from entering. First Deputy Prosecutor General considers that it was so called chimney effect, and death was caused by carbon monoxide poisoning of gas combustion products.

27. According to the source, since 2 May 2015, the prosecutor office has shown no essential progress in the investigation into the death of 42 persons at the Trade Unions House. Moreover, according to the Head of the Investigation Team, the MIA has not identified any suspects for this crime yet. The source asserts that the failure of conducting effective investigation in to the death of 42 opposition members at the Trade Unions House, which is ultimately in contrast with the full-fledged discriminatory persecution of 20 'pro-federalism' defendants, who were charged with mass riots on Grecheskaya Street in the city centre, demonstrates bias and politically motivated attitude of the Government towards political opponents.

28. As an example of Government's politically motivated attitude towards investigation of the 2 May 2014 events and bringing the perpetrators to justice, the source reports that, on 27 May 2014, a 'pro-unity' activist was arrested for allegedly firing at 'pro-federalism' activists that took refuge at the Trade Unions House. He was accused under Section 294 of the CPU and transferred to Kyiv. On 29 May 2014, the Pecherskiy district court in Kyiv placed him under house arrest as a preventive measure. On 15 February 2015, he died in Odesa hospital apparently because of a respiratory disease. This death was highly suspicious leading to assertion that it was faked and covered up to avoid justice.

29. On 19 August 2014, another 'pro-unity' activist was arrested for allegedly beating pro-federalism activists, who were jumping out of the burning Trade Unions House, and was transferred to the Kherson SIZO. On 26 August 2014, the district court of Kherson placed him under custody as a preventive measure. On 30 August 2014, due to the pressure from the 'pro-unity' activists, the Court of Appeal of Kherson region changed his preventive measure to personal obligation not to leave Odesa without permission from the investigation department. On 9 February 2015, the criminal investigation against him was closed because of lack of evidence.

30. *A single case against a 'pro-unity activist' charged with intentional homicide:* On 18 May 2014, a 'pro-unity' activist was arrested and accused of firing at, and injuring several people on Grecheskaya Street in the city centre on 2 May 2014, including police officers, 'pro-federalism' activists and journalists. He was transferred to Kyiv and charged with intentional homicide and mass riots under Section 115 and 294 of the CPU respectively. On 21 May 2014, he was placed under house arrest in Odesa. In November 2014, the term of the house arrest expired. In April 2015, the MIA completed the criminal investigation and, on 20 April 2015, transmitted the criminal case materials to the Primorsky district court of Odesa.

31. The source argues that deprivation of liberty of Messrs Doljenkov, Sakauov, Mefedov, Zibnytskyy, Kovshov, Sukhanov, Ilnytskyy, Korchynskyy, Romanyuk, and Dzubenko is arbitrary, and falls under Categories II, III and V as classified by the Working Group. In particular, their deprivation of liberty resulted from the exercise of fundamental rights protected by international law, in particular, rights to freedom of opinion and expression, political participation and association (Category II). They were deprived of their liberty in violation of due process rights and in the absence of minimum detention conditions (Category III). Furthermore, the source argues that they were arrested, detained, and put on trial because of their political opinion, which was critical of and contrary to the Government. Furthermore, the source asserts that the failure of conducting effective investigation into the death of 42 opposition members at the Trade Unions House, as well as failure to apply the same treatment to 'pro-unity' suspects, which is ultimately in contrast with the full-fledged discriminatory persecution and detention of 10 'pro-federalism' defendants, who were charged with mass riots on Grecheskaya Street in the city centre,

demonstrates completely bias and politically motivated attitude of the Government towards its political opponents. Hence their deprivation of liberty constitutes a violation of international law for reasons of discrimination based on political or other opinion (Category V).

Response from the Government

32. Even though the response from the Government was received after the deadline expired, the Working Group decided to consider the information in the best interest of the victims. In its response of the 30 July 2015, the Government of Ukraine informed the Working Group that on 2 May 2014, mass disorder broke out in the city of Odesa following clashes between fans of the Metalist and Chernomorets Football Clubs, with close to 500 aggressive, organized and armed persons shouting slogans about the federalization of Ukraine. The clashes left 48 dead and approximately 250 injured; 18 of them had gunshot wounds, which in six cases proved fatal (this took place on Grecheskaya Street).

33. In addition, during the fire at Trade Unions House, 42 persons died of carbon monoxide poisoning and falling from a height, as confirmed by the results of an investigation.

34. Investigations into the events are being carried out by the investigation units of the Ministry of Internal Affairs and the Office of the Procurator-General, which are considering a number of issues.

35. The first matter is the improper discharge of duties by staff of the internal affairs agencies who failed to safeguard public order appropriately, which resulted in mass disorder. That situation is being investigated by the Main Investigation Department of the Office of the Procurator-General.

36. The second part of the investigation is intended to identify the leaders of the mass disorder, as well as those who played an active part in it, carrying out attacks and using weapons and other means to inflict bodily harm. These are being investigated as criminal incidents by the Ministry of Internal Affairs Main Investigation Department.

37. The third part of the investigation is concerned with establishing the cause of the fire at Trade Unions House that led to the death of 42 persons. This investigation is being carried out by the Ministry's Main Investigation Department.

38. The Ministry's Main Investigation Department is currently handling a total of five criminal cases related to the events of 2 May 2014 in Odesa:

(a) Criminal case No. 12014160500003700 concerning evidence of offences committed by the leaders of the mass disorder and active participants in it, provided for in the Criminal Code in articles 294 (mass disorder), 115 (premeditated murder), 341 (seizure of State or public buildings or facilities), 345 (threats or violence against a member of the law enforcement agencies), 296 (hooliganism) and 194 (criminal destruction or damage to property);

(b) Criminal case No. 42014160100000154 concerning dereliction of duty by members of the State emergency services in Odesa province when saving lives and extinguishing the fire during the events of 2 May 2014 in Odesa and their failure to help persons whose lives were endangered, on the basis of evidence of criminal offences provided for in articles 135, paragraph 3, and 367, paragraph 2, of the Criminal Code;

(c) Criminal case No. 12014000000000263 concerning I.I. Astakhov, suspected of having committed criminal offences provided for in the following articles of the Criminal Code: 115 (paras. 2 (1), (6) and (9)), 15 (para. 3), 190 (para. 4), 194 (para. 4), 263 (para. 1), 294 (para. 2) and 358 (para. 3);

(d) Criminal case No. 1201400000000558 concerning A.V. Tananushko and A.A. Gliznutsa, suspected of having committed a criminal offence provided for in article 294, paragraph 2, of the Criminal Code;

(e) Criminal case No. 12014160500002190 concerning A.A. Fominov, A.V. Budko, I.M. Vinenko, E.A. Gurev, E.A. Shparaka, S.A. Kulta, A.V. Povar, E.Y. Antipov, V.S. Barbinov and A.I. Shabalin, suspected of having committed a criminal offence provided for in article 294, paragraph 2, of the Criminal Code and into A.V. Davidchenko on suspicion of having committed criminal offences provided for in articles 293 and 294, paragraph 2, of the Criminal Code.

39. During the pretrial inquiry in respect of criminal case No. 12014160500003700, investigating officers arrested 118 persons under article 208 of the Code of Criminal Procedure: 47 persons were arrested in the Afina shopping centre, 64 persons were arrested in Trade Unions House and 7 persons were arrested at a later time, after the events of 2 May 2014. Non-custodial preventive measures were selected for 106 of the persons arrested.

40. With regard to the persons named in the message from the Chairperson and Rapporteur of the Working Group on Arbitrary Detention, we wish to inform the Working Group that, on 3 May 2014, the Bilhorod-Dnistrovskyy regional department of the Ministry of Internal Affairs main office for Odesa province arrested **Oleksandr Oleksiiovych Dzubenko** (22.03.1986) under article 208 of the Code of Criminal Procedure, on suspicion of having committed a criminal offence provided for in article 294, paragraph 2, of the Criminal Code. On 5 May 2014, the investigating judge of Primorsk District Court, Odesa, ordered that Mr. Dzubenko be remanded in custody for 60 days as a preventive measure. On 2 July 2014, the investigating judge extended the period of suspect Dzubenko's detention by 60 days, until 2 September 2014. A further order of 29 August 2014 extended the period of detention to 180 days, until 29 October 2014. The investigating judge's subsequent order, of 23 October 2014, further extended the period of detention until 1 December 2014.

41. **Pavlo Volodymyrovych Kovshov** (13.11.1986) was arrested on 3 May 2014 under article 208 of the Code of Criminal Procedure by the Bilhorod-Dnistrovskyy regional department of the Ministry of Internal Affairs main office for Odesa province on suspicion of having committed a criminal offence provided for in article 294, paragraph 2, of the Criminal Code. On 5 May 2014, the investigating judge of Primorsk District Court, Odesa, ordered that Mr. Kovshov be remanded in custody for 60 days as a preventive measure. On 2 July 2014, the investigating judge extended the period of suspect Kovshov's detention by 60 days, until 2 September 2014. A further order of 26 August 2014 extended the period of detention to 6 months, until 26 October 2014. The investigating judge's subsequent order, of 22 October 2014, again extended the period of detention, until 1 December 2014.

42. **Sergey Mykhailovych Korchynskyy** (11.06.1973) was arrested on 2 May 2014 under article 208 of the Code of Criminal Procedure by the Ovidiopol regional department of the Ministry of Internal Affairs main office for Odesa province on suspicion of having committed a criminal offence provided for in article 294, paragraph 2, of the Criminal Code. On 5 May 2014, the investigating judge of Primorsk District Court, Odesa, ordered that Mr. Korchynskyy be remanded in custody for 60 days as a preventive measure. On 24 June 2014, the investigating judge extended the period of suspect Korchynskyy's detention by 60 days, until 30 August 2014. A further order of 27 August 2014 extended the period of detention to 180 days, until 28 October 2014. The investigating judge's subsequent order, of 23 October 2014, again extended the period of detention, until 1 December 2014.

43. **Vladislav Vasylovych Romanyuk** (03.06.1995) was arrested on 2 May 2014 under article 208 of the Code of Criminal Procedure by the Ovidiopol regional department of the Ministry of Internal Affairs main office for Odesa province on suspicion of having

committed a criminal offence provided for in article 294, paragraph 2, of the Criminal Code. On 5 May 2014, the investigating judge of Primorsk District Court, Odesa, ordered that Mr. Romanyuk be remanded in custody for 60 days as a preventive measure. On 1 July 2014, the investigating judge extended the period of suspect Romanyuk's detention by 60 days, until 29 August 2014. A further order of 29 August 2014 extended the period of detention to 180 days, until 27 October 2014. The investigating judge's subsequent order of 22 October 2014 again extended the period of detention, until 1 December 2014.

44. **Maksim Vladimirovich Sakauov** (22.09.1976) was arrested on 3 May 2014 under article 208 of the Code of Criminal Procedure by the Bilhorod-Dnistrovskyy regional department of the Ministry of Internal Affairs main office for Odesa province on suspicion of having committed a criminal offence provided for in article 294, paragraph 2, of the Criminal Code. On 5 May 2014, the investigating judge of Primorsk District Court, Odesa, ordered that Mr. Sakauov be remanded in custody for 60 days as a preventive measure. On 3 July 2014, the investigating judge extended the period of suspect Sakauov's detention by 60 days, until 3 September 2014. A further order of 27 August 2014 extended the period of detention to 6 months, until 27 October 2014. The investigating judge's subsequent order of 21 October 2014 again extended the period of detention, until 1 December 2014.

45. **Oleksandr Mykolaiovych Sukhanov** (09.02.1975) was arrested on 3 May 2014 under article 208 of the Code of Criminal Procedure by the Ovidiopol regional department of the Ministry of Internal Affairs main office for Odesa province on suspicion of having committed a criminal offence provided for in article 294, paragraph 2, of the Criminal Code. On 5 May 2014, the investigating judge of Primorsk District Court, Odesa, ordered that Mr. Sukhanov be remanded in custody for 60 days as a preventive measure. On 2 July 2014, the investigating judge extended the period of suspect Sukhanov's detention by 60 days, until 1 September 2014. A further order of 22 August 2014 extended the period of detention to 6 months, until 20 October 2014. The investigating judge's subsequent order of 16 October 2014 again extended the period of detention, until 1 December 2014.

46. **Volodymyr Volodymyrovych Zibnytskyy** (11.05.1983) was arrested on 3 May 2014 under article 208 of the Code of Criminal Procedure by the Bilhorod-Dnistrovskyy regional department of the Ministry of Internal Affairs main office for Odesa province on suspicion of having committed a criminal offence provided for in article 294, paragraph 2, of the Criminal Code. On 6 May 2014, the investigating judge of Primorsk District Court, Odesa, ordered that Mr. Zibnytskyy be remanded in custody for 60 days as a preventive measure. On 2 July 2014, the investigating judge extended the period of suspect Zibnytskyy's detention by 60 days, until 3 September 2014. A further order of 22 August 2014 extended the period of detention to 6 months, until 20 October 2014. The investigating judge's subsequent order of 17 October 2014 again extended the period of detention, until 1 December 2014.

47. **Vladislav Vasylovych Ilnytskyy** (07.06.1995) was arrested on 2 May 2014 under article 208 of the Code of Criminal Procedure by the Ovidiopol regional department of the Ministry of Internal Affairs main office for Odesa province on suspicion of having committed a criminal offence provided for in article 294, paragraph 2, of the Criminal Code. On 5 May 2014, the investigating judge of Primorsk District Court, Odesa, ordered that Mr. Ilnytskyy be remanded in custody for 60 days as a preventive measure. On 27 June 2014, the investigating judge extended the period of suspect Ilnytskyy's detention by 60 days, until 25 August 2014. A further order of 20 August 2014 extended the period of detention to 6 months, until 20 October 2014. The investigating judge's subsequent order of 16 October 2014 again extended the period of detention, until 1 December 2014.

48. **Sergey Oleksandrovyeh Doljenkov** (03.01.1988) was arrested on 6 May 2014 under article 208 of the Code of Criminal Procedure by the investigations department of the Ministry of Internal Affairs main office for Odesa province on suspicion of having

committed a criminal offence provided for in article 294, paragraph 2, of the Criminal Code. On 8 May 2014, the investigating judge of Pechersk District Court, Kyiv, ordered that Mr. Doljenkov be remanded in custody for 60 days as a preventive measure. On 1 July 2014, the investigating judge extended the period of suspect Doljenkov's detention by 60 days, until 29 August 2014. A further order of 28 August 2014 extended the period of detention to 6 months, until 24 October 2014. A subsequent order issued by the investigating judge of Primorsk District Court, Odesa, on 21 October 2014 again extended the period of detention, until 1 December 2014.

49. **Evgeniy Igorovych Mefedov** (22.05.1983) was remanded in custody for a period of 60 days as a preventive measure by order of the investigating judge of Primorsk District Court, Odesa, on 6 May 2014. On 4 July 2014, the investigating judge extended the period of suspect Mefedov's detention by 60 days, until 2 September 2014. A further order of 29 August 2014 extended the period of detention to 6 months, until 29 October 2014. The investigating judge's subsequent order of 28 October 2014 again extended the period of detention, until 1 December 2014.

50. **Oleksandr Oleksandrovykh Posmychenko** (30.03.1990) was arrested on 2 May 2014 under article 208 of the Code of Criminal Procedure by the Ovidiopol regional department of the Ministry of Internal Affairs main office for Odesa province on suspicion of having committed a criminal offence provided for in article 294, paragraph 2, of the Criminal Code. On 6 May 2014, the investigating judge of Primorsk District Court, Odesa, ordered that Mr. Posmychenko be remanded in custody as a preventive measure for 60 days from the time of arrest, until 1 July 2014. On 27 June 2014, the investigating judge extended Mr. Posmychenko's detention by 60 days, until 25 August 2014. A further order of 21 August 2014 extended the period of detention by 60 days, until 20 October 2014. The investigating judge's subsequent order of 16 October 2014 again extended the period of detention by 46 days, until 1 December 2014.

51. All persons were arrested under article 208 of the Code of Criminal Procedure either at the time of committing the offence or directly after committing the offence.

52. The appeals courts of Odesa province and Kyiv city have repeatedly considered appeals lodged by the suspects and their lawyers against the choice of preventive measure and its extension. These appeals were dismissed.

53. Following their arrests, the suspects were transferred to the State Prison Service's pretrial detention centres in Vinnitsa, Odesa and Kyiv. From September 2014, they were all transferred to the Odesa pretrial detention centre of the State Prison Service in Odesa province, where they are being held at the present time.

54. From 3 May 2014 to 5 May 2014, Mr. Ilnytskyy, Mr. Korchynskyy, Mr. Romanyuk and Mr. Sukhanov were held in a temporary holding facility of the Ovidiopol regional department, while Mr. Dzubenko, Mr. Zibnytskyy, Mr. Kovshov and Mr. Sakauov were held in a temporary holding facility of the Bilhorod-Dnistrovskyy municipal department of the Ministry of Internal Affairs main office for Odesa province.

55. Thereafter, they were escorted by convoys from military detachment No. 3014, Odesa, to Vinnitsa province, where they were held at the temporary holding facilities of Chechelnyk regional department, Trostyanets regional department, Khmelnytskyi municipal department and Nemyriv regional department of the Ministry of Internal Affairs regional office in Vinnitsa province, as well as in Vinnitsa Correctional Facility No. 1.

56. On 30 September 2014, they were sent to Odesa Correctional Facility No. 21, where they remain to this day, with the exception of Mr. Romanyuk and Mr. Sakauov, who were transferred on 6 March 2015 to a pretrial detention centre at Odesa Correctional Colony No. 14.

57. Mr. Mefedov was held from 6 to 7 May 2014 in the temporary holding facility of the regional government department of the Ministry of Internal Affairs main office for Odesa province, and has been in Odesa Correctional Facility No. 21 since 7 October 2014.

58. Mr. Doljenkov was held from 6 to 8 May 2014 in the temporary holding facility of the Ministry of Internal Affairs main office in Kyiv and in Kyiv pretrial detention centre from 8 August to 7 October 2014; he has been held in Odesa Correctional Facility No. 21 since 8 October 2014.

59. On the instructions of the Office of the Procurator-General, the procuratorial services of Kyiv, Odesa and Vinnitsa provinces checked the information contained in the message from the Chairperson and Rapporteur of the Working Group on Arbitrary Detention at the institutions in which these individuals were held.

60. It was established from the checks that all of the individuals are being held in custody on the basis of orders issued by Primorsk District Court, Odesa, that the periods of detention have repeatedly been extended by the courts in line with the current Code of Criminal Procedure and that they have been transferred on the orders of the Ministry of Internal Affairs Main Investigations Department.

61. During detention in the Ministry of Internal Affairs temporary holding facility and pretrial detention centres of the State Penal Correction Service, no indications were found of any violations of their rights to proper nutrition, everyday necessities and medical services or of the use of torture.

62. No violations have been found of the rights of persons held under house arrest as a preventive measure during the criminal proceedings.

63. During the pretrial investigation into Mr. Doljenkov as a suspect, he sent multiple complaints to the Office of the Procurator-General and the courts concerning his unlawful detention and transfer to Kyiv for the selection of preventive measures against him, but no grounds were found for his complaints.

64. The courts have also repeatedly considered complaints by the suspect, Mr. Mefedov, and his counsel about the translation of documents for him into Russian and the delivery to him of copies thereof. Some of the complaints have been satisfied by the courts.

65. The suspects' detention is in no way linked to their political position. The pretrial investigation has not been carried out from a prejudicial or discriminatory point of view.

66. None of the rights of the suspects were violated during their detention, conveyance to court, the selection of preventive measures or their remand in custody. Under the Code of Criminal Procedure, a suspect can be held in custody for no more than 12 months in respect of criminal proceedings for serious or especially serious offences.

67. On 24 November 2014, the Office of the Procurator-General approved a bill of indictment against 21 people (11 of whom were being held in custody) for the commission of a criminal offence provided for in article 294, paragraph 2, of the Criminal Code. The case is currently being considered by Malinov District Court, Odesa. After sending the bill of indictment for consideration by the court, in accordance with article 315 of the Code of Criminal Procedure, the court extended the measures for launching criminal investigations against the accused, with the result that their detention in custody was extended for the period of the criminal proceedings.

68. During the pretrial investigation by investigators, individuals representing both adversarial positions were held in detention.

69. Thus, on 26 May 2014, **Mr. Nikolay Nikolaevich Volkov** (02.11.1981) was detained by the Ministry of Internal Affairs Main Investigations Department in accordance

with article 208 of the Code of Criminal Procedure on suspicion of having committed a criminal offence provided for in article 294, paragraph 2, of the Criminal Code. Following his detention, Mr. Volkov was placed in the temporary holding facility of the Ministry of Internal Affairs main office in Kyiv.

70. By order of the investigating judge of Pechersk District Court, Kyiv, Mr. Volkov was placed under house arrest on 28 May 2014. However, on 27 February 2015, the criminal proceedings against Mr. Volkov under article 294, paragraph 2, of the Criminal Code were suspended in accordance with article 284, paragraph 1 (5), of the Code of Criminal Procedure, in connection with the suspect's death.

71. On 18 May 2014, **Mr. Sergey Aleksandrovich Khodiyak** (29.04.1981) was detained by the Ministry of Internal Affairs Main Investigations Department in accordance with article 208 of the Code of Criminal Procedure on suspicion of having committed a criminal offence provided for in article 294, paragraph 2, of the Criminal Code. Following his detention, Mr. Khodiyak was placed in the temporary holding facility of the Ministry of Internal Affairs main office in Kyiv.

72. By order of the investigating judge of Pechersk District Court, Kyiv, Mr. Khodiyak was placed under house arrest on 20 May 2014. On 22 April 2015, the Office of the Procurator-General approved and submitted to Primorsk District Court, Odesa, a bill of indictment alleging that Mr. Khodiyak had committed criminal offences provided for in article 155 (paras. 2 (5) and (7)); article 115 (para. 2); article 115 (paras. 2 (1), (5) and (7)); article 294 (para. 2); and article 348 of the Criminal Code.

73. The judicial proceedings are still in progress. On 14 August 2014, a search warrant was issued for the suspect, **Mr. Vsevolod Eduardovich Goncharevskiyi** (16.08.1967). On 14 August 2014, Suvorov District Court, Kherson, issued an order authorizing the detention of Mr. Goncharevskiyi in connection with his appearance in court.

74. On 19 August 2014, Mr. Goncharevskiyi was detained by the Ministry of Internal Affairs Main Investigations Department in accordance with article 208 of the Code of Criminal Procedure on suspicion of having committed a criminal offence provided for in article 294, paragraph 2, of the Criminal Code. On 19 August 2014, the investigating judge of Suvorov district, Kherson, ordered that Mr. Goncharevskiyi be remanded in custody as a preventive measure.

75. On 29 August 2014, the Court of Appeal of Kherson province considered a complaint from Mr. Goncharevskiyi's lawyer against the preventive measure of remand in custody. The complaint was dismissed. On 30 August 2014, the investigating judge of Suvorov district, Kherson, ordered the preventive measure applied to Mr. Goncharevskiyi to be changed from remand in custody to release on his own recognizance.

76. During the pretrial investigation on 9 February 2015, the decision was taken to close the criminal case against Mr. Goncharevskiyi, who was suspected of committing a criminal offence provided for in article 294, paragraph 2, of the Criminal Code, on the basis of article 284, paragraph 1, subparagraph 3, of the Code of Criminal Procedure, after there were found not to be sufficient grounds to prove the defendant's guilt in court and once all means of finding evidence had been exhausted.

77. The pretrial investigation into the criminal case is still open. The Office of the Procurator-General was also responsible for the procedural aspect of criminal investigations into the dereliction of duty by members of the State emergency services in Odesa province when saving lives and extinguishing the fire during the events in Odesa on 2 May 2014 and their failure to help persons whose lives were endangered, on the basis of evidence of criminal offences provided for in article 135, paragraph 3, and article 367, paragraph 2, of

the Criminal Code. The investigations are being conducted by the Ministry of Internal Affairs Main Investigations Department.

78. The investigations identified all of the officials who might have been accomplices to the offences. The main parties in the case were questioned, in the presence of pretrial investigation supervisors from the Office of the Procurator-General and the forensic expert, and this was recorded on video.

79. At present, the investigator has collected the necessary official documents and viewed video recordings of the events in Odesa on 2 May 2014. Official investigations into the actions of officials of the main office of the State emergency services in Odesa province are now also conducted regularly.

80. Procedural decisions will be taken in relation to any official's action or inaction, once the findings of an official interdepartmental and interdisciplinary commission on fire-related inquiries, a study of the oil-based products, combustibles and lubricants and a health and occupational safety assessment are received. These are being conducted by experts from the Ministry of Internal Affairs State Research Centre for Forensic Sciences and the Kyiv forensic investigations research institute under the Ministry of Justice.

81. A letter was sent by the Office of the Procurator-General to the management of the State Research Centre for Forensic Sciences asking for the reports to be completed as soon as possible.

82. The pretrial investigations are still ongoing. The Main Investigations Department of the Office of the Procurator-General is conducting the pretrial investigation into criminal case No. 201416000000186, which was registered by the investigations department of the Office of the Procurator-General of Odesa province on 2 May 2014 with respect to the failure on that same day to take essential and exhaustive measures to guarantee the protection of public order during the demonstration by "pro-unity" supporters and the mass riots which occurred in Odesa because employees of the Ministry of Internal Affairs main office in Odesa province did not carry out their duties properly, resulting in fatalities, and thus serious consequences, with *indicia* of an offence provided for in article 367, paragraph 2, of the Criminal Code.

83. Investigations into this case also concern:

(a) A negligent attitude to duties by officials of the Odesa Municipal Department of the Ministry of Internal Affairs main office in Odesa province, which led on 4 May 2014 to the seizure by the anti-Maidan movement of rooms of the regional administrative building of the main Ministry of Internal Affairs office of Odesa province, also with serious consequences for State interests, and constituted an offence under article 367, paragraph 2, of the Criminal Code;

(b) Improper exercise of their official authority by members of the Ministry of Internal Affairs main office in Odesa province, leading to the release on 4 May 2014, in violation of legislation on criminal procedure, of 63 individuals who had been detained on 2 May 2014 for especially serious offences (Criminal Code, arts. 115 and 294) from the temporary holding facility of the regional government department. This also had serious consequences as it constituted an offence under article 365, paragraph 3, of the Criminal Code.

84. The criminal cases of 6 June 2014 were combined as case No. 4201416000000186.

85. In the case of 13 May 2014, Mr. D.B. Fuchedzhi, the deputy chief of the Ministry of Internal Affairs main office in Odesa province — the chief of police — and acting chief of the Ministry of Internal Affairs main office in Odesa province, was informed that he was suspected of having committed offences under article 365, paragraph 3, and article 367, paragraph 2, of the Criminal Code, in terms of the improper organization and coordination

of forces and resources under his authority, which were protecting public order as reserves in Odesa on 2 May 2014 during the mass riots at Grecheskaya street, Kulikovo square and around the Trade Unions House — which led to the serious consequence of 48 deaths — and also regarding the issuance of an order to release from the temporary detention facility of the regional government department of the Ministry of Internal Affairs main office in Odesa province 63 persons detained as suspects in relation to the mass riots in Odesa on 2 April 2014.

86. On 15 May 2014, a search warrant was issued for Mr. Fuchedzhi, with the State Security Service responsible for the search. On 16 May 2014, the investigating judge was granted authorization to detain Mr. Fuchedzhi so as to ensure his attendance during consideration of the appeal for a preventive measure to be used.

87. On 17 October 2014, the criminal proceedings regarding Mr. Fuchedzhi became a separate case.

88. On 9 January 2015, the General Secretariat of the International Criminal Police Organization (INTERPOL) denied the request for an international search warrant for Mr. Fuchedzhi on the grounds of article 3 of the Organization's Constitution (that the prosecution was political in nature). A pretrial investigation into the case was stopped, in accordance with article 280, paragraph 1 (2), of the Code of Criminal Procedure, owing to concealment of the suspect's whereabouts from the investigating bodies.

89. Furthermore, criminal case No. 4201416000000186 was split into separate criminal cases concerning:

(a) Mr. A.A. Netrebskyi, the former chief of the Odesa Municipal Office of the Ministry of Internal Affairs main office in Odesa province, under article 367, paragraph 1, of the Criminal Code, for dereliction of duty resulting in the seizure of the administrative building of the State police department, and article 365, paragraph 1, of the Criminal Code, for acting outside the scope of his powers and abusing his official authority by releasing detainees from the local authorities' temporary holding facility;

(b) Mr. V.P. Pryima, the former chief of the regional government's temporary holding facility of the Ministry of Internal Affairs main office in Odesa province, and Mr. R.V. Kondratov, the former inspector on duty at the regional government's temporary holding facility of the Ministry of Internal Affairs main office in Odesa province, under article 365, paragraph 1, of the Criminal Code, for unlawfully acting outside the scope of their powers and abusing their official authority by releasing detainees from the local authorities' temporary holding facility.

90. Following the preliminary investigations on 27 October 2014, bills of indictment concerning Mr. Netrebskyi, Mr. Pryima and Mr. Kondratov were transferred to Primorsk District Court, Odesa, for the merits to be considered. The trial is still ongoing.

91. In criminal case No. 4201416000000186 of 30 April 2015, it was reported that Mr. P. S. Lutsyuk, the former chief of the Ministry of Internal Affairs main office in Odesa province, was suspected of having committed an offence under article 367, paragraph 2, of the Criminal Code. The actions of middle management at the internal affairs agencies will be assessed once investigations have been completed and evidence has been collected.

Further comments from the source

92. The response from the Government has been transmitted to the source on 17 August 2015.

93. The source informed that the mass disorder in the centre of Odesa on 2 May 2014 consisted in clashes between 'pro-unity' supporters and fans of the Metalist and Chernomorets Football Clubs and 'pro-federalism' supporters.

94. The source alleges that the Government of Ukraine's response places the emphasis only on the role of 'pro-federalism' supporters and does not pay attention to the role of 'pro-unity' supporters, involved into the clashes. In its opinion both sides of the conflict were wearing helmets and masks, armed with shields, axes, wooden/metallic sticks and some with firearms and intensively participated into the clashes. Furthermore, out of 48 victims of the 2 May violence, 46 victims were supporters of the 'pro-federalism' movement.

95. The Government of Ukraine informed the Working Group on Arbitrary Detention about five criminal cases related to the events of 2 May 2014 in Odesa. The source informed that on 2014, the criminal case № 12014160500003700 was divided into several separate cases. It should be underlined that the majority of the criminal cases initiated by the MoIA were opened against 'pro-federalism' activists and supporters. Furthermore, out of **118 suspects**, detained in respect of the criminal case № 12014160500003700, **115 people** belong to 'pro-federalism' supporters. Only **3 persons** were activists of the 'pro-unity' movement.

96. In its response, the Government of Ukraine does not provide any detailed information in respect of apprehension of **Sakauov, Sukhanov, Zibnytskyi, Ilnytskyi, Posmychenko, Dzyubenko, Kovshov, Romaniuk, Posmychenko** and **Korchynskyi**. In addition, the Government of Ukraine's response contains inaccuracies regarding the date of the detention of these individuals. According to the source, all of them were detained in the 'Afina' shopping centre on 2 May 2014, while the Government of Ukraine informed that **Kovshov, Sakauov, Sukhanov and Zibnytskyi** were detained on 3 May 2014. By mentioning incorrect time of the detention, law enforcement could have violated due process rights of the detainees: access to legal aid and not being held in custody without a court ruling more than 72 hours.

97. The Government of Ukraine's response does not contain information concerning allegations of violations of due process rights and absence of minimum detention conditions in regards of 'pro-federalism' detainees detained on 2 May 2014 and transferred to Ovidiopol and Bilhorod-Dnistrovkyi police precincts. The source alleges that the Government of Ukraine failed to ensure the right to fair trial as well as minimum detention conditions for all 47 individuals detained in the 'Afina' shopping centre: detainees' relatives were not timely informed about their detention and whereabouts (incommunicado detention); the detainees were not provided with sufficient number of legal defenders by the State Legal Aid Centre; Ovidiopol and Bilhorod-Dnistrovkyi police precincts had no adequate space for 47 detainees to ensure minimum detention conditions for all of them; the detainees were not provided with food and water on regular basis. Additionally, the Government of Ukraine does not comment allegations of human rights violations during the transfer of the detainees from Ovidiopol and Bilhorod-Dnistrovkyi police precincts to Vinnytsia region on 4-5 May 2014 that took more than 12 hours: the detainees received neither food, nor water; nor were they provided with sanitation facilities or sufficient medical care.

98. Contrary to the Government of Ukraine's statement, the source alleges that **Yevhen Mefiodov** was detained on 2 May 2014, about 11 p.m. near the House of Trade Unions. At the same time, according to the Government's response, **64 persons** were detained in the House of Trade Unions, while on 4 May 2014, only **63 detainees** related to the 2 May violence were illegally released from the Odesa police temporary detention facility. This information may confirm the fact that at first, **Mefiodov** was detained and taken to the Odesa police temporary detention facility. Later, due to his bad health condition, **Mefiodov** was taken to the hospital by ambulance. During the medical treatment in the hospital (2-6 May 2014) **Mefiodov** was guarded by SBU officers. Therefore, he was detained on 2 May 2014, not on 6 May, as states the Government of Ukraine's response. Furthermore, on 6

May 2014, SBU investigators came to interrogate **Mefiodov**, and despite doctor's recommendations – took him out from the hospital and transferred to the court. Therefore, **Mefiodov's** right fair trial was violated by the SBU.

99. The Government of Ukraine informed the Working Group on Arbitrary Detention that **Serhii Dolzhenkov** was detained by police on 6 May 2014, under Article 208 of the Criminal Procedure Code² which allows detention of a person without ruling of the court warrant immediately after committing a crime, on charges of taking part in the mass disorder during the 2 May violence. Given the fact that he was detained four days after the events, detention of **Dolzhenkov** should have been sanctioned with a court decision. Furthermore, the Government of Ukraine's response does not specify **Dolzhenkov's** health status – he got wounded during the 2 May violence and was not provided with adequate medical care after the detention and during his transfer from Odesa to Kyiv.

100. The Government of Ukraine did not inform the Working Group on Arbitrary Detention that all detainees in respect of the criminal cases on the 2 May violence are 'pro-federalism' supporters. On 16 September 2014, separate criminal cases against **Sakauov, Sukhanov, Zibnytskyi, Ilnytskyi, Posmychenko, Dzyubenko, Kovshov, Romaniuk, Dolzhenkov, Mefiodov** and **Korchynskyi** (held in custody since May 2014) as well as against other 10 'pro-federalism' activists were united in one criminal case no. 1201400000000380 (*Mass disorder in the city centre*) and transferred to the Prymorskyi District Court of Odesa. Contrary, none of 'pro-unity' activists involved into the clashes in the city centre has been brought to responsibility for participating in the clashes during the 2 May violence.

101. Due to high political pressure, the indictment on criminal case no. 1201400000000380 (*Mass disorder in the city centre*) was transferred to the Malynovskyi district court of Odesa. The court trial against **Sakauov, Sukhanov, Zibnytskyi, Ilnytskyi, Dzyubenko, Kovshov, Romaniuk, Dolzhenkov, Mefiodov** and **Korchynskyi** as well as against **Posmichenko** (a separate case) is still on-going.

102. The Government of Ukraine's response does not mention that the criminal court trial of **Serhii Khodiak** that started on 23 June 2015 has been violently disturbed by 'pro-unity' activists (mostly men, many in paramilitary uniform). The 'pro-federalism' supporters and relatives of the victims of the 2 May violence (mostly women and elderly people) have been violently prevented by 'pro unity' activists from attending the hearings.

103. Regarding **Viacheslav Honcharevskyi** case, the Government of Ukraine's response does not mention that the measure of restraint applied to **Honcharevskyi** was changed 30 August 2014, under high pressure on the panel of judges from 'pro-unity' supporters. On 3 July 2015, following the appeal filed on 17 February 2015, by victims, the Prymorskyi District Court of Odesa overturned the decision of the Office of the Prosecutor General and resumed criminal investigation. At present, the criminal case against **Viacheslav Honcharevskyi** is still on-going without essential progress.

² **Article 208. Lawful apprehension by a competent official**

1. A competent official has the right to apprehend without investigating judge's, court's ruling, an individual suspected of the commission of crime for which a punishment of imprisonment is stipulated, only in case:

1) this person was caught upon committing a criminal offence or making an attempt to commit it;
2) if immediately after the commission of crime, an eye-witness, including the victim, or totality of obvious signs on the body, cloth or the scene indicates that this individual has just committed the crime...

104. During the 2 May court hearings, the source alleges that numerous violations of the right to fair trial were committed. The court trials in respect of the 2 May violence are neither objective, nor impartial. During May 2014 – July 2015, the judges received pressure from the ‘pro-unity’ movement. In addition, comparing the abovementioned criminal cases it was perceived the biased attitude of the Government towards ‘pro-federalism’ activists. In particular, 10 ‘pro-federalism’ defendants, **Sakauov, Sukhanov, Zibnytskyi, Ilnytskyi, Posmychenko, Dzyubenko, Kovshov, Romaniuk, Dolzhenkov, Mefiodov and Korchynskyi** are held in custody for more than one year without proper evidence of their guilt, while, regarding the ‘pro-unity’ suspects, the courts used to choose only non-custodial measures of restraint.

105. Criminal case no. 12014100000000154 concerning fire brigade officials’ negligence was launched only on 16 October 2014. For more than one year after the 2 May violence, the criminal investigation remains inadequate with poor progress over the reporting period.

Disposition

106. The Working Group observes that submissions from the source and from the Government are not contradictory in nature as far as the facts are concerned. Therefore detentions of numerous persons resulted after the clashes between groups during the massive disorder in Odesa on 2 May 2014.

107. The Working Group notes that the information received was not sufficiently substantiated to enable the Working Group to take adequate action in this case regarding the arbitrariness of the detention of Maxim Sakauov, Evgeniy Mefedov, Volodymyr Zibnytskyy, Pavlo Kovshov, Oleksandr Sukhanov, Vladislav Ilnytskyy, Sergey Korchynsky, Vladislav Romanyuk, Oleksandr Dzubenko and Sergey Doljenkov.

108. In light of the preceding, the Working Group on Arbitrary Detention does not possess enough information for a conclusion; therefore the Working Group decides to file the case without prejudice.

[Adopted on 26 August 2016]
