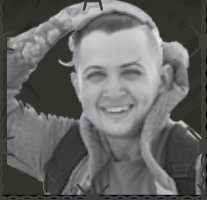


28

HOSTAGES OF THE KREMLIN



LET MY
PEOPLE
GO!



Center
for Civil
Liberties



OPEN DIALOG



The report was produced as part of the 'LetMyPeopleGo' advocacy campaign through the joint efforts of the 'Euromaidan SOS' initiative, the Centre for Civil Liberties and the Open Dialog Foundation.

AUTHORS:

Andrii Osavoliuk (*Open Dialog Foundation*)

Palina Brodik, Maria Lysenko (*Centre for Civil Liberties, Euromaidan SOS*)

EDITORS:

Maria Tomak, Olexandra Matviychuk (*Centre for Civil Liberties, Euromaidan SOS*),

Lyudmyla Kozlovska, Igor Savchenko (*Open Dialog Foundation*)

PROOFREADERS:

Galyna Valchyshyn, Christina Padinker

DESIGN AND LAYOUT:

Mykhailo Fedyshak



'Euromaidan SOS' – a self-organised initiative, the aim of which is to gather information about the missing, murdered, detained and persecuted participants of Euromaidan in Kyiv and the regions in order to further assist in the provision of legal and other assistance to these individuals. Currently, the initiative is engaged in documenting human rights violations in order to protect persecuted people in temporarily occupied Crimea and eastern Ukraine.



The Open Dialog Foundation – human rights organisation, whose statutory objectives include protection of human rights, democracy and rule of law in the post-Soviet area. Particular attention of the Foundation is focused on the largest CIS countries: Kazakhstan Russia and Ukraine.

The Foundation pursues its goals through the organisation of observation missions, including election observation and monitoring of the human rights situation in the CIS countries. Based on these activities, the Foundation creates its reports and distributes them among the institutions of the EU, the OSCE and other international organisations, foreign ministries and parliaments of EU countries, analytical centres and media.

In addition to observational and analytical activities, the Foundation is actively engaged in cooperation with members of parliaments involved in foreign affairs, human rights and relationships with the CIS countries, in order to support the process of democratisation and liberalisation of internal policies in the post-Soviet area. Significant areas of the Foundation's activities also include support programmes for political prisoners and refugees.



The campaign 'LetMyPeopleGo' was launched by 'Euromaidan SOS' for the protection of all Ukrainian citizens, incarcerated for political reasons in Russia and occupied Crimea. The aims of the campaign are to bring about the release of all those on the list 'LetMyPeopleGo' and to monitor the observance of their fundamental rights, including freedom from torture, the right to free access to a defender, the right to medical assistance and others. The campaign is supported by a significant number of organisations in Ukraine and abroad: the Centre for Civil Liberties, the Open Dialog Foundation, People in Need, Euromaidan Press, Euromaidan Warsaw, Ukrainian Helsinki Human Rights Union, Kharkov Human Rights Group and the Ministry of Foreign Affairs of Ukraine as well as Ukrainian Parliament Commissioner for Human Rights. Presently, the campaign is working on 13 cases of prisoners in Russia and 8 prisoners in occupied Crimea.




The Centre for Civil Liberties (CCL) was established in 2007 for the purpose of promoting human rights and respect for human dignity in Ukraine and independent states formed after the collapse of the USSR. The CCL monitors and analyses legislation, verifying its compliance with human rights standards, carries out public control over the actions of law enforcement agencies, courts and local authorities, supervises the investigation of crimes committed during Euromaidan and documents political persecution in the temporarily occupied Crimea, as well as human rights violations and war crimes in the Donbass.

TABLE OF CONTENTS

2	INTRODUCTION
5	THE CASE OF NADIYA SAVCHENKO
11	‘THE CHECHEN CASE’ – STANISLAV KLYKH AND MYKOLA KARPYUK
20	UKRAINIANS DETAINED FOR POLITICAL REASONS IN CRIMEA
21	THE CASE OF THE ‘CRIMEAN TERRORISTS’ – OLEG SENTSOV, OLEKSANDR KOLCHENKO, GENNADIY AFANASYEV, OLEKSIY CHYRNIY
28	THE CASE OF OLEKSANDR KOSTENKO
33	THE CASE OF HAYSER DZHEMILEV
38	OTHER CASES OF POLITICAL PROSECUTION IN CRIMEA
43	THE CASE OF SERHIY LYTVYNOV
49	THE CASE OF YURIY YATSENKO AND BOHDAN YARYCHEVSKYI
54	ESPIONAGE CASES – VALENTYN VYHIVSKYI, YURIY SOLOSHENKO, VIKTOR SHUR
60	THE CASE OF ESTON KOHVER
64	CONCLUSIONS AND RECOMMENDATIONS

INTRODUCTION

1



Russian authorities perceived the democratic revolution in Ukraine as a direct threat to Russia's authoritarian regime. They responded with military aggression and the occupation of part of Ukraine which has always positioned itself as a 'brotherly state' to Russia.

With a view to legitimising the annexation of the Crimean peninsula and the participation of the Russian army in the armed conflict in the Donbas in the public opinion, the authorities resorted to powerful state propaganda, designed to portray Ukraine and its inhabitants as the embodiment of an external enemy. One of the support mechanisms for this image was the initiation of a number of trumped-up criminal cases against Ukrainians, who were accused of such serious crimes as 'genocide', 'mass murder', 'terrorism' and 'espionage'. Innocent people have become victims of criminal prosecution who either by chance, or due to the actions of the security services, have found themselves in the hands of Russian 'law enforcement agencies'.

A wave of politically motivated persecution has also swept the annexed territory of Crimea. The purpose of this persecution was to spread an atmosphere of fear across the peninsula and thus prevent any public speeches being made against the occupying powers. The methods employed by the Russian special services and law enforcement agencies (kidnapping, torture, intimidation, denial of legal and diplomatic protection, conducting show trials), cite Russia as a state which uses 'state terrorism' against civilians.¹

Besides propaganda purposes, Moscow also uses imprisoned Ukrainians as hostages and the subject of their possible release as a bargaining chip during international negotiations. Also, they continually disseminate information about a possible exchange of Ukrainians for Russian servicemen, detained in Ukraine.

Thus far, it has been confirmed that at least 30 Ukrainians faced unlawful criminal prosecution in Russia on the basis of their ethnicity or political views. The true number of those prosecuted may be several-fold higher.

Russia has not limited itself to prosecuting Ukrainians. In September 2014, Estonian Security Police officer Eston Kohver was abducted from the territory of Estonia. This

case demonstrated that European governments should also be wary of the threat of kidnap and unfair prosecution of their citizens by Russia.

The international community has repeatedly expressed its support for Ukrainians imprisoned in Russia, and recognised their criminal prosecutions as politically motivated and contrary to generally accepted legal norms. The international community has repeatedly expressed its support for Ukrainians incarcerated in Russia, and recognised their criminal prosecutions as politically motivated and contrary to generally accepted legal norms. The question of the need for the release of all Ukrainian hostages has been repeatedly raised in the course of the Minsk negotiations and was fixed in the signed agreements. However, Russia continues the practice of non-fulfillment of its own international obligations, and refuses to release the Ukrainians. In this connection, the terms of the Minsk Agreements cannot be deemed to have been met and, therefore, the regime of sanctions against Russia should be extended.

The prosecution of Ukrainians in Russia are of a political nature, that is, they have openly and increasingly frequently, concealed the true reasons behind actions or the inaction of the authorities in carrying out the prosecutions. Ultimately, all the various forms and circumstances underlying the reasons for the prosecutions can be reduced to two goals of the authoritarian Russian

1 IPO / The Geneva Declaration on Terrorism – www.i-p-o.org/GDT.HTM

regime: involuntary termination or a change in the nature of one's public activities and maintaining a specific political force in power.²

Within the framework of the human rights campaign 'LetMyPeopleGo', the Open

Dialog Foundation and the Civic Initiative 'Euromaidan SOS', present a report about 27 Ukrainians and 1 citizen of a European country who have faced unlawful and politically motivated criminal prosecution in Russia and occupied Crimea.

2 Human rights in Ukraine / The guidelines on the definition of the term 'political prisoners'- www.khpg.org/ru/index.php?id=1383036342

THE CASE OF NADIYA SAVCHENKO

2



Photo of Anton Naumlyuk

Nadiya SAVCHENKO

AGE:
34

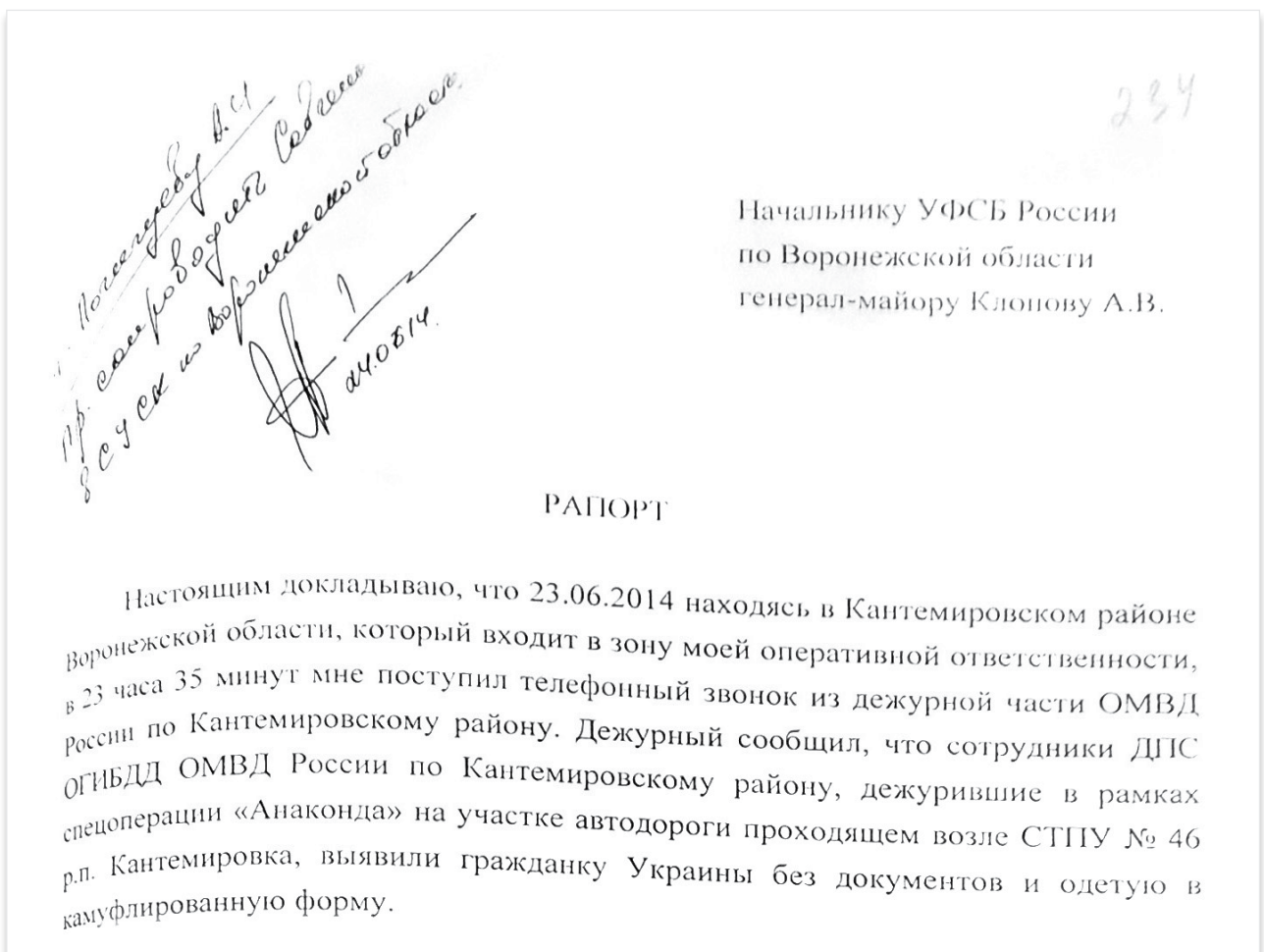
former soldier of the Armed Forces of Ukraine, participant of the protest rallies known as 'Euromaidan', Ukrainian MP, Ukrainian delegate to the Parliamentary Assembly (PACE).

ми першод...
було боротися...
показали світові...
юції Гідності...
гнкою зоранкою...
араз ми не маємо...
нимо боротися, ми...
владою суєзда!
мені і Україні усього...
вному бою, своєю...
в глобальній акції...
2015 року.
усього серця, дякую
Off/ Nadiya Savchenko

Nadiya Savchenko participated in the anti-terrorist operation (ATO) in the East of Ukraine as a volunteer in the territorial defence battalion 'Aydar' and on 17 June, 2014, she was captured by militants of the self-proclaimed 'People's Republic of Lugansk' (PRL) near the village of Metalist (Lugansk Province).

On 8 July, 2014, it transpired that Nadiya Savchenko was in a detention facility in Voronezh (Russia). The fact of the citizen of Ukraine's 'detention' was reported to the Embassy of Ukraine in the Russian Federation. The investigating authorities of the Russian Federation officially announced that Savchenko was arrested on 30 June, 2014, in the Russian Federation, where she had allegedly travelled of her own accord on 23 June, 2014 with the intention of claiming asylum.

As Nadiya Savchenko later confirmed, she was covertly transferred to Russia on the night of 24 June, and for 7 days, she was forcibly held captive in a hotel in Voronezh. During that time she was questioned repeatedly, including with the use of a polygraph. Interrogations were conducted by investigator Dmitry Manshin personally, who later began to oversee a criminal case against her. Interrogations of Savchenko were conducted without the presence of a lawyer. Thus, Art. 56 and Art. 189 of the Code of Criminal Procedure were violated; under these articles, a lawyer can be present during an interrogation if a witness expresses such a desire. The forcible detention of Nadiya Savchenko without a warrant is, in fact, an illegal deprivation of liberty and a criminal offence under Russian law (Art. 127 of the CC of the RF).



The fabricated report on the revealing of Nadiya Savchenko on the territory of the Russian Federation

On 2 July, 2014, i.e. before Ukraine was formally notified of the detention of Savchenko, a hearing was held, during which it was ordered that a measure of restraint be applied to the Ukrainian woman in the form of arrest.

At the first hearing, Nadiya Savchenko was represented by a Russian public attorney, who failed to provide her with a competent legal defence, and, in fact, acted in the interests of the prosecutor. Due to the intervention of the Open Dialog Foundation and the Ministry of Foreign Affairs of Ukraine, independent lawyers: Mark Feigin, Ilya Novikov and Nikolay Polozov were successfully engaged in the defence of the Ukrainian servicewoman.

Nadiya Savchenko was initially charged with ‘complicity in the deaths of Russian journalists: Igor Korneliuk and Anton Voloshin’. Reporters who had travelled illegally to the territory of Ukraine with a group of pro-Russian militants in order to cover recent attacks on Ukrainian soldiers.³ Nadiya Savchenko allegedly ‘played the role of a fire spotter in the mortar attack during which the journalists were killed’. She has categorically denied her guilt from the moment of her arrest. Later, the charges were reclassified from ‘complicity’ to ‘aiding and abetting’ the murder of Russian journalists. Also, the Ukrainian woman was charged with ‘attempted murder of two or more persons’. On 24 April, 2015, Nadiya Savchenko was presented with another charge – ‘illegal crossing of the border of the Russian Federation’.

In the final version of the criminal case, Savchenko is accused of the following crimes: complicity in the murder of two or more persons (Article 33, section 5, subsections ‘a’, ‘e’, ‘zh’, ‘l’; Article 105, section 2 of the CC of the RF), aiding the attempted murder of two or more persons, committed in a dangerous way due to political hatred of a group of persons (Article 33, section 3, subsections ‘a’, ‘e’, ‘zh’ and ‘l’; Article 105, section 2 of the CC of the RF) and illegal crossing of the Russian border (Article 322, section 1 of the CC of the RF).⁴

Evidence of innocence of all the criminal charges

In respect to the charge of aiding and abetting the murder of Russian journalists, Nadiya Savchenko’s counsels managed to obtain evidence substantiating their client’s alibi.

The main evidence supporting Savchenko’s innocence is *the call history from her phone*, which Russian lawyers received from the Ukrainian Security Service (SSU). This information indicates that, at the time of the deaths of the Russian journalists, Nadiya Savchenko had already been, for several hours, in central Lugansk, where she had been taken immediately following her capture. Therefore, Savchenko could not have taken part in the fire spotting of the mortar attack on journalists, as alleged by the Investigative Committee of the Russian Federation (IC of the RF).

Also, the counsels *questioned several witnesses who saw Nadiya on the day that she was taken into captivity, i.e. on 17 June, 2014. It follows from the statements of those questioned that Nadiya Savchenko had been captured prior to the time that the Russian journalists were killed.* The Investigative Committee of the Russian Federation refused to admit this evidence, citing that the witnesses were questioned on the territory of Ukraine, not Russia. Currently, it is impossible to question these witnesses (in the presence of Russian investigators) on the territory of Russia as it wouldn’t be safe for the witnesses – Russian law enforcement authorities could

3 LIGA: Novosti [‘The News’] / In Russia, Ukrainian pilot Savchenko was accused of assassination – www.news.liga.net/ua/news/politics/2463444-u_ros_ukra_nsku_lotchitsyu_savchenko_zvinuvatili_u_vbivstv.htm

4 Mediazona / The trial of Savchenko. The prosecution and interrogation of victims www.zona.media/online/protsess-savchenko-obvinenie/

detain them and accuse of the same crimes as Nadiya Savchenko. In fact, all of the Ukrainians, who participated in the anti-terrorist operation (ATO) in the East of Ukraine (volunteer soldiers, soldiers of the AFU, volunteers), are at risk of criminal prosecution in Russia.

| The charge of attempted murder of two or more persons.

According to the criminal case file, Nadiya Savchenko and the Armed Forces of Ukraine are accused of shelling civilians in the Lugansk Province, among which there were also Russian journalists. According to investigators, several civilians were allegedly in the vicinity of the place of shelling, but only two Russian journalists died as a result. On the contrary, Savchenko's counsels managed to uncover evidence that the number of those killed at the locus of the shelling was much higher (approx. 12 people), but the investigative bodies deliberately glossed over this fact. The fact is that the remainder of those killed were pro-Russian militants of the self-proclaimed 'People's Republic of Lugansk' (PRL). The deaths of so many armed men shows that a significant number of militants were gathered at the scene of the deaths of the journalists. That is, the journalists were killed in clashes between the Armed Forces of Ukraine and pro-Russian military groups. Thus, the charge of attempted murder of civilians is unjustified.

On 15 September, 2015, during the preliminary hearing in the court, the counsels requested that the case be referred back to the prosecutor's office and investigated in order to determine whether the number of casualties was, in fact, higher. The counsels provided evidence which showed that the death toll was actually much higher than it had been recorded in the criminal case file. However, neither the public prosecutor nor the court supported the motion,⁵ although the increase in the number of casualties could have led to the bringing of more serious charges against Savchenko.

| The charges of illegal border crossing.

The investigative bodies allege that Nadiya Savchenko *'independently crossed the border of the Russian Federation as a refugee and was detained on the territory of Russia'*. This version appears entirely unrealistic, and therefore raises some questions. For example, why did a soldier of the Armed Forces of Ukraine decide to flee to the territory of the oppugnant state? Or – why, after 'discovering' Savchenko on the territory of Russia, was she held for a week under guard in a hotel rather than at a police station, and 'officially detained' only 7 days later? The investigators have repeatedly changed the version of the circumstances of Savchenko's release from captivity of terrorists. First, they claimed that Nadiya managed to escape, but then the investigators began to assert that militants had released her voluntarily. The latest version also sounds unrealistic, since the separatists continue to hold in captivity hundreds of Ukrainian soldiers who are not released, despite the official 'truce' currently in effect. Savchenko was captured at the height of military combat in the region.

| The prisoner of war has PACE immunity

In October 2014, in the parliamentary elections, Nadiya Savchenko was elected as a member of the Ukrainian parliament, which allowed her to become a delegate from Ukraine to PACE. The PACE Committee on Rules of Procedure, Immunities and Institutional Affairs has officially

5 Ekho Moskv. ['The Echo of Moscow'] / Blogs. Nobody counts dead separatists – www.echo.msk.ru/blog/ilya_s_novikov/1624056-echo/

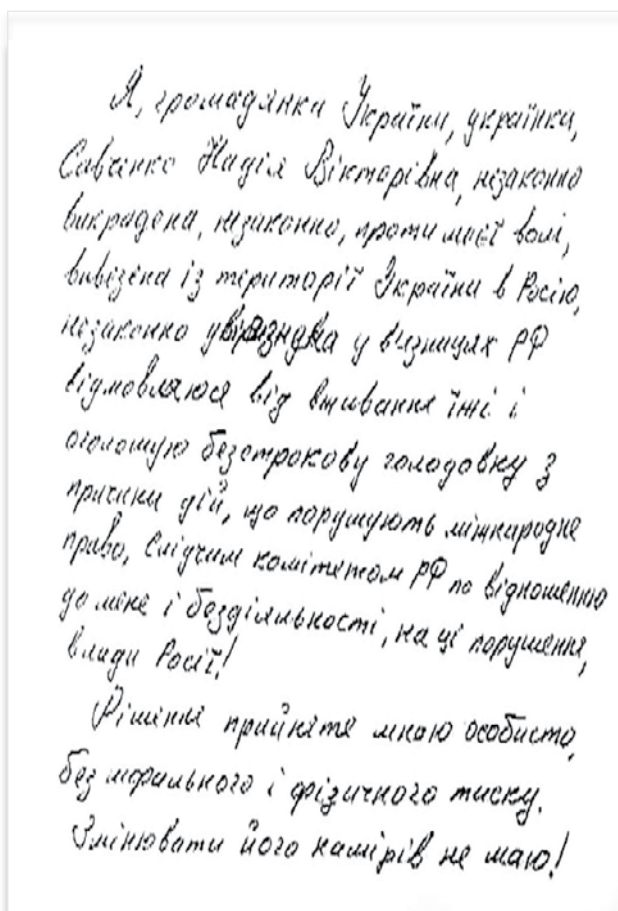
confirmed that Nadiya Savchenko, being a delegate to PACE, enjoys immunity from prosecution. Also, on **29 April, 2015**, the European Parliament adopted a special resolution on the case of Nadiya Savchenko, which reads that Russia, in accordance with international obligations, should respect Savchenko's immunity and release her immediately.⁶

Russia refused to comply with the decision of PACE, citing that Savchenko 'had committed a crime' before receiving parliamentary immunity. In response, PACE prepared a special report which stated that *'the immunity of Assembly members also applies to all cases of prosecution, carried out against them before their parliamentary authorities'*.⁷

Also, in accordance with international norms, Nadiya Savchenko is a prisoner of war and, therefore, her detention constitutes a violation of the Geneva Convention on the part of Russia.

On **12 December, 2014**, Nadiya Savchenko addressed formal statements to the International Committee of the Red Cross, as well as the head of the Investigative Committee of the Russian Federation Aleksandr Bastrykin, in which she stated that he considers her to be a prisoner of war. In this regard, she requested that all investigative actions in which she is involved be suspended until such time that a court rules on her status.⁸ Thus far, no special judicial decisions have been issued on the status of Nadiya Savchenko in Russia; therefore, in accordance with international standards, she is a prisoner of war (Article 45 of the Additional Protocol to the Third Geneva Convention). As a result, all proceedings against her are prohibited (until a court rules that she is not a prisoner of war). The bringing of charges against her and the implementation of a preventive measure are also unlawful.

On **13 December, 2014**, Nadiya Savchenko went on hunger strike in protest against her illegal detention. In a statement addressed to the Director of the Federal Penitentiary Service of the Russian Federation Gennadiy Kornilenko, Nadiya Savchenko declared that she would continue her hunger strike *'until the day of her return to Ukraine or the last day of her life in Russia'*.⁹ The hunger strike lasted 82 days before Nadiya Savchenko was forced to end it.



Nadiya Savchenko's statement on her hunger strike

⁶ European Parliament resolution on the case of Nadiya Savchenko – www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P8-RC-2015-0406&language=EN

⁷ Facebook / The page of Ilya Novikov – <https://www.facebook.com/Ilya.S.Novikov/posts/10203306329338790>

⁸ Twitter / The page of Mark Feigin – https://twitter.com/mark_feygin/status/543420915586203648

⁹ Twitter / The page of Mark Feigin – https://twitter.com/mark_feygin/status/548501087930810368

| The court trial

On **22 September, 2015**, in the Donetsk City Court in the Rostov Province, the trial of Nadiya Savchenko commenced. Its first session was marked by the presence in the courtroom of a large group of Cossacks,¹⁰ who occupied most of the seats. This was a deliberate ploy aimed at reducing the number of seats for members of the public and independent observers.

From the outset, the trial was marred by the fact that most motions from the prosecutors were granted, and, on the other hand, the motions of Nadiya Savchenko and her defence were rejected. In this regard, Nadiya Savchenko stated that she would go on hunger strike, if her right to protection continued to be violated.

The cross-examination of witnesses of the prosecution revealed that the majority of testimonies were repeated verbatim, which may indicate that their testimonies had been contrived by the investigative bodies. To all specific questions from Nadiya Savchenko's defence, the witnesses replied with the standard phrases: "I don't remember" or "I didn't notice"; this can generally be construed as evidence of the false nature of the testimonies.

On **13 October, 2015**, Nadiya Savchenko's sister, Vira, the only witness of the defense, was denied entry into the territory of Russia without any justification being given. Following a reaction of the international community, Russia has now lifted the ban.

The Savchenko trial is currently ongoing. She faces up to 25 years' imprisonment. The final verdict is expected at the beginning of 2015. The counsels of the Ukrainian woman are in no doubt that she will ultimately be punished with the most severe sentence possible. Nadiya Savchenko flatly denies her guilt and states that if she is convicted, she will not ask President Vladimir Putin for clemency.

The case of Nadiya Savchenko is the most famous case involving the persecution of a Ukrainian in Russia for political reasons. The defenders of the Ukrainian woman have deliberately opted to publicise the case, although lawyers have been repeatedly threatened with criminal liability for disclosure of the case file. Due to the close monitoring of the Savchenko case by the public and the media, unlike in the cases of other Ukrainians, she has managed to avoid torture. Publicity is the only way to ensure Savchenko's release given that the outcome of the case has apparently been decided in advance due to politically motivated charges, and it is only international pressure that can affect the situation.

¹⁰ Cossacks – members of paramilitary formation in modern Russia. Cossacks took an active part in the occupation of Crimea; they also participated in the war in the east of Ukraine, fighting on the side of separatists.

'THE CHECHEN CASE' – STANISLAV KLYKH AND MYKOLA KARPYUK

3

Photo from the family's personal archive



**Stanislav
KLYKH**

AGE:
42

a history lecturer
at a Kyiv university.

**Mykola
KARPYUK**

AGE:
51

deputy head of the Ukrainian
nationalist organisation
UNA-UNSO, deputy head
of the political party 'Pravyi
sektor' ['The Right Sector'],
a participant of Euromaidan.



Photo from the family's personal archive

коже
тем
том
са
как
эта
позже по поворе

Citizens of Ukraine Stanislav Klykh and Mykola Karpyuk are involved as defendants in the so-called Chechen case' – a fabricated criminal case against senior officials of Ukraine (including the current Prime Minister of Ukraine Arseniy Yatsenyuk) for crimes committed on the territory of the Russian Federation during the First Chechen War of the mid-1990s. Mykola Karpyuk and Stanislav Klykh are simultaneously defendants and witnesses in the criminal case. They gave their testimonies under torture.

Karpyuk and Klykh were arrested under different circumstances for alleged administrative offences. Later, they were accused of forming a gang and participating in it, as well as the assassinations of Russian soldiers during the First Chechen War.

| The detention

Stanislav Klykh was detained on **11 August, 2014** on the territory of Russia in the city of Orel (Orel Province) during a private visit to a girl whom he had met earlier in Crimea. Stanislav's parents learned about the incident through a phone call from an unknown man, who told them that their son had been arrested for 15 days for 'disobeying a police order'.¹¹ Stanislav's parents immediately went to the city of Orel in order to meet their son in person, but they did not find him there, as Stanislav had been transferred to Yessentuki (North Caucasian Federal District, Russia). On **24 August, 2014**, at 2 a.m., Tamara Ivanovna, the 71-year-old mother of Stanislav, received a phone call from her son. He confirmed that he was in Yessentuki and reported that he was being accused of crimes committed in the mid-90s. The next day, she received a text message stating that he was about to be transported to Pyatigorsk (Stavropol Krai, Russia). That was the last time she had any contact with her son and for many months after, she received no information about him.

Mykola Karpyuk was detained under even more mysterious circumstances. For a long time, there was no information about his whereabouts, which prompted fear for his life and safety. It was only 14 months later that the first information about his whereabouts came to light.

At the beginning of March 2014, the leadership of the 'Right Sector' sent Mykola Karpyuk to a meeting with 'the leadership of the Russian Federation', organised by another party member Vyacheslav Fursa. On **17 March, 2014**, Mykola, along with Vyacheslav, went to a meeting in Moscow. On the Russian border, they were arrested and charged with an administrative offence, and, subsequently, sent to the Bryansk department of the FSB. On **20 March, 2014**, the FSB accused Mykola of involvement in the Chechen events and transferred him to the unit of the Investigative Committee of the Russian Federation in Yessentuki.¹² Vyacheslav Fursa was released. The aforementioned chronology of events raises suspicions that in this case, there was a pre-planned operation aimed at luring the leaders of the 'Right Sector' to the territory of the Russian Federation under false pretenses.

11 'Otkrytaya Rossiya' ['Open Russia'] / How Russia makes 'Basayev's fighters' of Ukrainian teachers: the grotesque story of a prisoner – <https://openrussia.org/post/view/7954/>

12 'Ekho Moskvyy' ['The Echo of Moscow'] / Blogs. Mykola Karpyuk, accused in the case of 'Ukrainian militants': 'False testimonies against many people are on my conscience' – www.echo.msk.ru/blog/zoya_svetova/1639472-echo/

An excerpt from a note from the Ministry of Foreign Affairs of Ukraine, issued in September 2015, with regard to violations of the rights of Mykola Karpyuk and Stanislav Klykh and, in particular, repeated refusals for visits to citizens of Ukraine, held in custody by the Russian Federation, by consular officials

Незважаючи на неодноразові звернення Української сторони щодо забезпечення зустрічі консульських посадових осіб України із зазначеними громадянами, що передбачено Консульською Конвенцією між Україною та Російською Федерацією, дозволу на таку зустріч до цього часу не надано. При цьому Українською Стороною отримано інформацію про застосування тортур до арештованих громадян України.

Українська Сторона розцінює відсутність протягом, відповідно, 17 та 13 місяців дозволів на відвідання затриманих громадян як грубе порушення та свідоме нехтування взятими на себе Російською Федерацією міжнародними зобов'язаннями, зокрема положеннями статті 13 Консульської конвенції між Україною та Російською Федерацією, і спроби приховати порушення положень Європейської конвенції про запобігання катуванням чи нелюдському або такому, що принижує гідність, поводженню чи покаранню.

I The investigation

Following their arrests, the whereabouts of the two defendants was kept secret for a year. As it later became known from Karpyuk's letter to the European Court of Human Rights (ECHR), during that time, he was repeatedly transferred: from Bryansk to Yessentuki, Pyatigorsk, Vladikavkaz, Chelyabinsk, and eventually to Grozny (Chechnya), on the eve of the hearing. Several inquiries of the Russian Ombudsman Ella Pamfilova, made to the authorities of the Russian Federation, brought about no results. Information regarding the whereabouts of Stanislav was obtained thanks to Counsel Marina Dubrovina, who only managed to join the case 11 months after Klykh's arrest. It transpired that Stanislav, similarly to Mykola Karpyuk, was frequently transferred within the territory of the Caucasus: for a time he was held in Yessentuki, he was later transferred to Pyatigorsk, Zelenokumsk, and then Vladikavkaz. The day before the hearing, Klykh was taken to Grozny.

Ukrainian consul in Rostov-on-Don, Aleksandr Kovtun, made attempts to hold a meeting with the accused; however, according to the Ukrainian Foreign Ministry, *"from the moment of their detention, in March and August 2014, respectively, the Russian side has ignored more than 20 requests from the Ukrainian Foreign Ministry, Ukrainian Embassy and the Consulate General of Ukraine in Rostov-on-Don"*.¹³

The interests of both prisoners at all hearings regarding the extension of the preventive measure were represented by the assigned lawyers who, as reported both by Karpyuk and Klykh, signed the prepared documents, failing to provide him with adequate legal protection.

All independent counsels, hired by the families of those accused, received denials to their applications to join the case throughout the entire pre-trial investigation. It was only in July 2015, at the final stage of the investigation, that Maria Dubrovina was given permission to

¹³ The Statement of the MFA of Ukraine on preventing consular officials of Ukraine from visiting prisoners Mykola Karpyuk and Stanislav Klykh in Russia – www.mfa.gov.ua/ua/press-center/comments/3761-zajava-mzs-ukrajini-shhodo-nedopusku-konsulyssykih-posadovih-osib-ukrajinido-uvjaznenih-v-rosiji-mikoli-karpyuka-ta-stanislava-kliha

represent Klykh. Mykola Karpyuk first met with an independent counsel Dokka Itslyayev just before the first hearing, i.e. in September 2015. All attempts to see Mykola, undertaken by the previous six lawyers, turned out to be futile.

The aforementioned facts indicate that **Stanislav Klykh and Mykola Karpyuk were deliberately isolated for the period of investigation.** Russian investigative authorities, in disregard of domestic and international law, deliberately blocked the accused's contact with the outside world (aside from a few phone calls that Klykh succeeded in making, and a single letter that Yelena Karpyuk received from her husband). **This isolation was aimed at preventing information leaks as regards the employment of illegal methods of investigation and obtainment of convenient evidence. It was also designed to eliminate the threat of those accused refusing to testify, by which they would have exercised their civil rights.**

| The fabrication of charges

According to investigators, UNA-UNSO, established in 1990, pursued the goal of “countering the Russian authorities in any form and stripping Russian citizens of Russian nationality”. In the mid-90s, UNA-UNSO was, indeed, involved in the Chechen conflict on the side of the Chechen Republic of Ichkeria, where it sent some of its members. According to the investigative bodies, the Ukrainians, sent to Chechnya, established the detachment ‘Viking’, whose members allegedly included Stanislav Klykh and Mykola Karpyuk. In this regard, they are accused of active participation *“in the clashes with soldiers of the Armed Forces of the Russian Federation on the territory of the Presidential Palace, ‘Minutka’ Square and the railway station in Grozny, during which they killed at least 30 soldiers and caused injuries of varying degrees of severity, to at least 13 soldiers”*.¹⁴

The only witness in the case is a citizen of Ukraine Oleksandr Malofeyev, who, according to investigators, also played an active part in the hostilities in Chechnya. Having returned to Ukraine, he committed several robberies, for which he was convicted. Following his release, he moved to the Novosibirsk Province, close to where his mother lives, and was convicted of further criminal offences and sentenced to 23 years' imprisonment – a term which he has been serving in the Russian Federation. In 2014, he was accused of participating in the hostilities in Chechnya, and, as a result, he became the third defendant in the ‘Chechen case’. However, in connection with the pre-trial agreement with the investigative bodies to plead guilty, his criminal case was split into separate proceedings. The charges against Mykola and Stanislav were formed solely on the basis of the testimony of Malofeyev; however, when examined more closely, they raise doubts for several reasons:

- Malofeyev suffers from a number of incurable diseases, in particular, the fourth stage of HIV, hepatitis B and C, tuberculosis; he is also a drug addict. According to Counsel Marina Dubrovina, the health condition of the witness may well have become a tool used to blackmail him, given his dependence on medication.
- Tattoos depicting symbols of the party were deemed as evidence of Malofeyev's membership in the UNA-UNSO. However, such a demonstration of one's party affiliation was not practiced by other members of the UNA-UNSO. Moreover, none of members of the party, questioned in Ukraine, recognise Malofeyev.

¹⁴ The Investigative Committee of the Russian Federation / The Chechen Republic launches court hearings on the merits in respect of members of the UNA-UNSO, accused of a number of serious crimes – www.sledcom.ru/news/item/967263

ИМ (КЛЫХОМ С.Р.) В ЭТОМ БОЮ БЫЛО УОИТО ЧЕТВЕРО
 Он видел, как после его выстрелов солдаты падали на
 землю и не подавали признаков жизни. В этом бою ему запомнился Яценюк
 Арсений Петрович, который тоже стрелял из автомата «Калашникова»,
 произвел порядка десяти выстрелов в российских военнослужащих, убил тот
 кого-либо или нет, он не видел. В этом бою ещё запомнился момент,
 постоянное перемещение Яценюка с одной огневой точки на другую. Все там
 занимали позицию, а тот бегал. На голове у Яценюка была войсковая каска,
 она еще чем-то была обмотана, то-ли свитером, то-ли еще чем-то, внутри еще
 что-то было. Он опасался за свою жизнь. После боя Яценюк часто был среди
 журналистов, много позировал, фотографировался, давал интервью. В их
 отряде Яценюк находился примерно до 4-5 января 1995 года, а потом через
 Грузию уехал в Киев вместе с какими-то журналистами. Больше Яценюка на
 территории Ичкерии-Чеченской Республики он не видел. Все бойцы отрядов

An excerpt from an indictment act, in which the name of the current Ukrainian Prime Minister Arseniy Yatsenyuk was mentioned 228 times, despite the transcendent absurdity of the allegations pertaining to his involvement in the Chechen events

- The case on the Chechen conflict was initiated back in 1997, and, subsequently, it has been repeatedly suspended. In 2013, simultaneously with the outbreak of Maidan in Kyiv (which may be merely a coincidence), it was once again resumed and sent for investigation to the Investigative Department of the North Caucasus Federal District of the IC of the RF. At that time, the names of Klykh and Karpyuk did not appear in the case file. Since March 2014, at the time of the arrest of Mykola, records of the interrogations of Malofeyev,¹⁵ containing the names of Klykh and Karpyuk, began to appear in the case file.
- When naming the participants of the Chechen events, Malofeyev also mentioned some famous Ukrainian politicians and public figures: Arseniy Yatsenyuk (current Prime Minister) Dmitry Yarosh (acting member of the Verkhovna Rada of Ukraine, the former leader of the nationalist party 'Right Sector'), Oleg Tyagnibok (the leader of the nationalist party 'All-Ukrainian Union 'Svoboda' ['Freedom']) and his brother Andrey Tyagnibok.¹⁶ These accusations show that the case is politically motivated and fully fabricated. Due to the exertion of brutal torture, Stanislav Klykh also incriminated people such as Yatsenyuk, Yarosh and the Tyagnibok brothers by testifying that they were involved in the Chechen military operations.

In addition to the questionable testimonies of witnesses, there are other circumstances that raise doubts over the validity of the charges:

- There are discrepancies between the actual circumstances, referred to in the indictment act. So, in different parts of the case file, different numbers of Ukrainian soldiers are presented (of 140 transferred Ukrainians, 500(!) took part in the fighting). There are discrepancies in terms of the type of weapon allegedly used by Karpyuk to commit the assassinations, and the nature of the injuries inflicted upon those he killed. Also, the strategic actions of the parties described in the criminal case, do not

¹⁵ 'Otkrytaya Rossiya' ['Open Russia'] / The Russian court will decide whether Yatsenyuk and Yarosh fought in Chechnya 20 years ago – <https://openrussia.org/post/view/9488/>

¹⁶ 'Rossiyskaya Gazeta' ['The Russian Newspaper'] / Who manages the chaos? – www.rg.ru/2015/09/08/bastrikin-site.html

Руки мои были связаны за спиной наружниками Мне связали веревками ноги и руки, наружники сказали ко второму пальцу правой ноги и среднему пальцу правой руки присоединили клеммы. Затем начали пропускать через меня электрический ток с разной продолжительностью то в течение десятков секунд, то микровенками молтками, то продолжительное время. Сколько времени это продолжалось не знаю. Я ни в чем не сознавался, поскольку не принимал участия в боевых действиях. Во время проведения такого рода 'дознаний' мне часто говорили 'Ты делал то-то', 'Югдо-то ты придумал в Грозный и делал то-то и то-то', 'С подобой были такие то люди' и подобные обвинекия.

An excerpt from Mikolay Karpyuk's statement, issued on 29 September 2015 and transferred to the defence. The statement was written in Grozny and pertains to the use of torture, as well as a description of all the events that he was forced to experience following his arrest

correspond to the real events of the Chechen conflict. All this testifies to the incompetence and lack of awareness of the persons who produced the indictment act, and therefore, the invalidness of the charges.¹⁷

- The charges of banditry, presented to both suspects, are not backed by an adequate evidence base; the charges of organising and leading a gang have not been substantiated, and the period of the existence of the gang was determined arbitrarily.
- Trafficking and the use of weapons and ammunition, described in the case file, are not reflected in the indictment act. They weren't presented charges of committing a deed punishable under the relevant article of the Criminal Code (Art. 222 of the Criminal Code of the RF). Under torture, Karpyuk was forced to incriminate himself and to 'confess' to using torture and killing captured soldiers. Malofeyev gave the same testimony concerning Karpyuk, however, for some reason, the latter was not accused of the crime.¹⁸ This fact also serves to cast doubt over the validity of the indictment act.
- According to Stanislav and his relatives, he had never been to Chechnya before. Between 1994 and 1995, Stanislav Klykh was a full-time student of the Faculty of History of the Taras Shevchenko National University, and as confirmation of this fact, the University presented his student record book.
- Karpyuk and his relatives also claim that Mykola did not fight in Chechnya. According to his associates, in 1994, Mykola was recovering from an injury, sustained earlier,

¹⁷ The Human Rights Centre Memorial" /The analysis of the indictment against Mykola Andronovich Karpyuk and Stanislav Romanovich Klykh – www.memohrc.org/sites/default/files/files/obv_zakl_klyh-karpyuk_2.docx

¹⁸ The Human Rights Centre Memorial" / Memorial" has analysed the indictment against the citizens of Ukraine whose trial began in Grozny – www.memohrc.org/news/pc-memorial-proanaliziroval-obvinitelnoe-zaklyuchenie-po-delu-grazhdan-ukrainy-sud-nad-kotorymi

and physically, he was not able to fight. In addition, he was taking care of his sick mother, who subsequently died in March 1995.

- As a public figure, Mykola Karpyuk often attracted the attention of the Ukrainian press and his name was printed on the pages of newspapers at that time, which can be confirmed by archival newspapers.
- **Regardless of the validity of the charges, the statute of limitations from the date of commission of the crimes under the incriminated articles expired in 2010, and, therefore, the court should consider closing the case.**¹⁹

| The use of torture

Immediately after engaging independent lawyers in the case, the two defendants made allegations of torture and recanted their previous testimonies. The statements of the accused and visible traces of violence on their bodies give reason to doubt the credibility of their testimonies which incriminated both themselves and others.

The exertion of torture on Stanislav Klykh. During the first two months, following the refusal to admit his presence in Chechnya, Stanislav Klykh was subjected to torture, which he later described in his letter to the ECHR. In particular, he reported the use of electric shocks, strangulation, battery, deprivation of sleep, food and water and the use of alcohol and psychotropic substances. During his time in the detention facility, Stanislav lost 15 kg and suffered from dystrophy. His feet are covered with numerous scars from prolonged kneeling. His hands are twisted due to handcuffing to bars. Before every torture session, a plastic bag, sealed with tape, was put over his head, and after the procedures, unknown masked men “spread green disinfectant and iodine on the wounds on his arms and legs, as in some places, the lesions in his skin almost went down to the bone”.²⁰

The exertion of torture on Mykolas Karpyuk. According to the same statement, sent by Mykola Karpyuk to the ECHR, he was also subjected to torture with the use of electric shocks (to the genitals and limbs), strangulation, battery and deprivation of sleep. In addition, he stated that at the time when needles were driven under his fingernails, he felt no pain, as his fingers were almost completely numb after the application of an electric current. However, the most severe torture for him were threats that his wife and son would be abducted and subjected to the same procedures. Following those threats, Mykola agreed to incriminate himself.

Among other things, it became known that Mykola attempted suicide. He tried to cut his throat with a rusty nail, found in a cell, but was stopped by the guard who was watching him on CCTV.²¹

¹⁹ The Human Rights Centre Memorial” /The analysis of the indictment against Mykola Andronovich Karpyuk and Stanislav Romanovich Klykh – www.memohrc.org/sites/default/files/files/1811.doc

²⁰ Ukrainskaya Pravda [‘The Ukrainian Truth’] / Ukrainian hostage Klykh, who allegedly fought in Chechnya, made a statement of torture in prison – www.pravda.com.ua/rus/news/2015/09/11/7080991/

²¹ ‘Otkrytaya Rossiya’ [‘Open Russia’] / Blogs. Mykola Karpyuk, accused in the case of ‘Ukrainian militants’: ‘False testimonies against many people are on my conscience’ – <https://openrussia.org/post/view/10033/>

| The trial

Mykola Karpyuk and Stanislav Klykh are accused of committing several crimes: leadership of and participation in a gang (Art. 209, sections 1 and 2 of the CC of the RF), the murder of two or more persons in connection with the performance of their official duties (Art. 102, letters 'v', 'z' and 'n' of the Criminal Code of the RSFSR), as well as the attempted murder of two or more persons in connection with the performance of their official duties (Art. 15, section 2, Art. 102, subsections 'v', 'z' and 'n' of the Criminal Code of the RSFSR).²² It should be noted that the wording "attempted murder of persons in connection with the performance of their official duties" was used exclusively in the Soviet Criminal Code which became ineffective in 1996. Both Ukrainians face a sentence of between 15 years' and life imprisonment.

On **15 September, 2015**, during the preliminary hearing in the Supreme Court of the Chechen Republic, the defendants' counsels filed a motion for the consideration of the case by the jury; following the admission of the motion, 12 primary jurors and 8 talesmen were appointed.²³ The jury trial began on **26 October, 2015**. On the same day, in addition to Marina Dubrovna and Dokka Itslayev, the interests of the prisoners were represented by Ilya Novikov, the current attorney of Nadiya Savchenko. Vera Savchenko, the sister of Nadia, was admitted as a public defender; however, after the first hearing, she was removed from the courtroom due to her 'impertinent behaviour'.

At the first hearing, the judge, without any justification, prohibited video recording by journalists present in the courtroom. The counsel's comments on the inadmissibility of the reading out of Karpyuk's testimony given under torture, in the presence of the jury, met with a refusal from the judge; as a response, Karpyuk, claiming that he didn't "*want to have anything to do with this lie*", demanded that he be removed from the courtroom. As a result, the court granted the request for examination of the allegations of torture, this time filed by the prosecutor's office.²⁴

The court hearings are scheduled to take place until the end of January 2016. However, given the relatively small number of talesmen, it is likely that the case will be reconsidered from the very beginning, if the number of potential talesmen is exhausted (in accordance with Russian legislation, the juror must be replaced after the first missed meeting). In this case, the consideration of the case may continue until February or March 2016.

The case of Ukrainians Mykola Karpyuk and Stanislav Klykh is different from similar cases, which may be linked to *de facto* armed aggression of Russia against Ukraine and the temporary occupation of Crimea, due to the statute of limitations for the alleged crimes. This fact greatly complicates the process of gathering evidence of innocence. **However, the lack of clarification regarding the circumstances of the detention of the accused, the complete isolation of the two men during the time of the investigation and, most importantly, the evidence of torture – all these factors serve to cast doubt over the legitimacy and**

²² The Investigative Committee of the Russian Federation / Members of UNA-UNSO", accused of a number of serious crimes, will be brought before court in Chechnya – www.sledcom.ru/news/item/961222

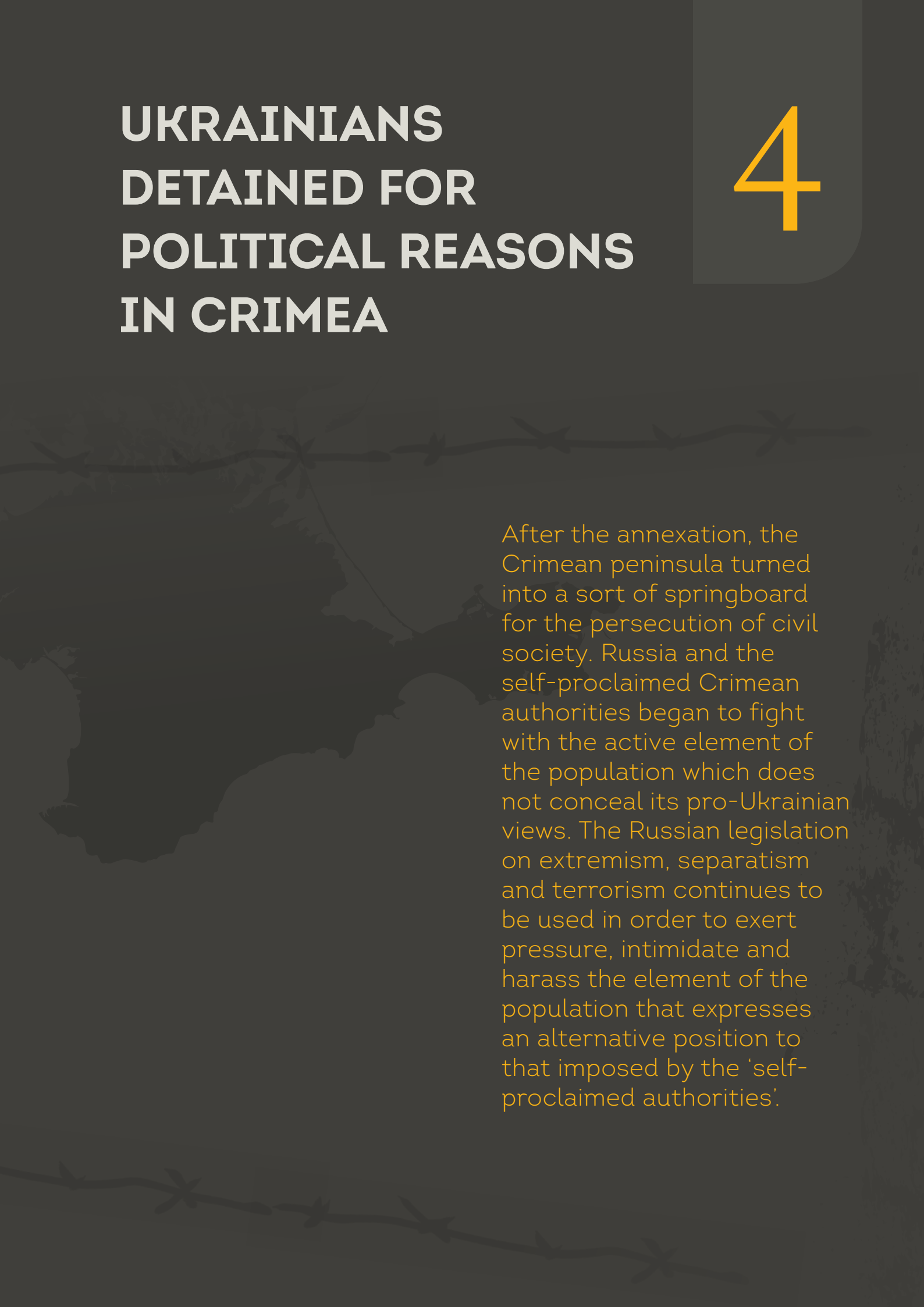
²³ Grani.ru / The defence of Karpyuk and Klykh insists on a jury trial – www.grani.ru/Politics/Russia/Politzeki/m.244317.html

²⁴ The Human Rights Centre 'Memorial' / The case of members of 'UNA-UNSO' in Grozny: Karpyuk demanded that he be removed from the courtroom during the reading of his confession – «I do not want to listen to these lies». www.memohrc.org/news/delo-chlenov-una-unso-v-groznom-karpyuk-potreboval-udalit-ego-iz-zala-suda-vo-vremya-chteniya

validity of the charges. Also, the circumstances of the disappearance of Mykola Karpyuk and accusations, subsequently presented against Yatsenyuk, Yarosh and the Tyagnibok brothers, lead to a logical conclusion that the case was initiated in order to discredit the ruling circles of 'post-Maidan' Ukraine, countering the policies of the current leadership of the Russian Federation. Stanislav Klykh and Mykola Karpyuk have become hostages of the criminal proceedings, directed against the highest senior officials of Ukraine. Indirect proof of this exists in the fact that, in the indictment act of the case, the name of the current Prime Minister of Ukraine Arseniy Yatsenyuk appears 228 times.

UKRAINIANS DETAINED FOR POLITICAL REASONS IN CRIMEA

4



After the annexation, the Crimean peninsula turned into a sort of springboard for the persecution of civil society. Russia and the self-proclaimed Crimean authorities began to fight with the active element of the population which does not conceal its pro-Ukrainian views. The Russian legislation on extremism, separatism and terrorism continues to be used in order to exert pressure, intimidate and harass the element of the population that expresses an alternative position to that imposed by the 'self-proclaimed authorities'.

THE CASE OF THE 'CRIMEAN TERRORISTS' – OLEG SENTSOV, OLEKSANDR KOLCHENKO, GENNADIY AFANASYEV, OLEKSIY CHYRNIY

4.1

Oleksandr KOLCHENKO

AGE:
26

activist of organisations
with left-wing ideology.



Photo of Anton Naumlyuk



Photo of Anton Naumlyuk

Oleg SENTSOV

AGE:
39

Ukrainian film director,
civil society activist.

Gennadiy AFANASYEV

AGE:
25

photographer.



Photo from the family's personal archive



Photo from social networks

Oleksiy CHYRNIY

AGE:
43

teacher of military history at
the Simferopol Institute of
Culture.

In May of 2014, four citizens of Ukraine: Gennadiy Afanasyev, Oleksandr Kolchenko, Oleg Sentsov and Oleksiy Chyryniy, were detained in Crimea. Before their detention, each of them had had an active pro-Ukrainian stance and openly opposed the Russian occupation of the peninsula. The detainees were accused of offences related to 'terrorism', namely: of the arson attack on the office door of the Russian Community of Crimea and the window of the office of the 'United Russia' party, as well as conspiracy to carry out an explosion at the Lenin monument and the Eternal Flame Memorial in Simferopol. Later, it became clear that Afanasyev, Chyryniy and Kolchenko, indeed, were involved in the arson attacks (the latter – only in one), but hardly can the nature and consequences of these offences be qualified as terrorism (they rather constitute hooliganism). The investigating authorities of the Russian Federation clearly qualified these offences wrongly in order to conduct a show trial of the pro-Ukrainian activists from Crimea, portraying them as an organised terrorist group.

According to the fabricated claims of the investigation, a 'terrorist group', consisting of a few people, operated in Crimea. In addition to the above-mentioned persons, the group also included Nikita Borkin, Ilya Zuykov, Enver Asanov and Stepan Tsiril, who are now being pursued. The group was allegedly led by Oleg Sentsov, who gave the order to carry out arson attacks and bombings in Simferopol.

According to investigators, by its actions, the 'terrorist group' pursued the goal of 'destabilising the situation on the peninsula and exerting influence on the authorities to ensure that they issue a decision to withdraw the 'republic' from the Russian Federation'.

On 23 May, 2014, the detained Ukrainians were moved to Moscow for further 'investigation'. The detainees were subjected to torture which was aimed at prompting confessions; also, Ukrainian diplomats were denied the opportunity to visit them, as the Russian side stated that it considers the Crimeans to be Russian citizens.

В Генеральной прокуратуре Российской Федерации рассмотрено Ваше обращение в интересах граждан Украины Сенцова О.Г., Кольченко А.А. Савченко Н.В., Афанасьева Г.С. и Чирния А.В. рассмотрено.

В ходе проведенной проверки, изложенные факты незаконного задержания и привлечения к уголовной ответственности вышеуказанных лиц, необоснованного избрания в отношении них меры пресечения в виде заключения под стражу, своего подтверждения не нашли.

Состояние здоровья арестованных, позволяет им находиться в условиях следственного изолятора.

Старший прокурор отдела управления
по надзору за расследованием
особо важных дел



О.А. Карасев

Official response of the General Prosecutor's Office, which, contrary to the official position of the Russian law enforcement agencies, cites Sentsov, Kolchenko, Afanasyev and Chyryniy as citizens of Ukraine

Convictions of Gennadiy Afanasyev and Oleksiy Chyrniy

Gennadiy Afanasyev and Oleksiy Chyrniy, having been subjected to torture, agreed to cooperate with the investigative bodies and confessed to all their alleged crimes. At the same time, they gave false testimonies against Oleg Sentsov and Oleksandr Kolchenko. Their criminal cases were divided into separate proceedings and considered in an accelerated mode – without the cross-examination of witnesses or analysis of evidence.

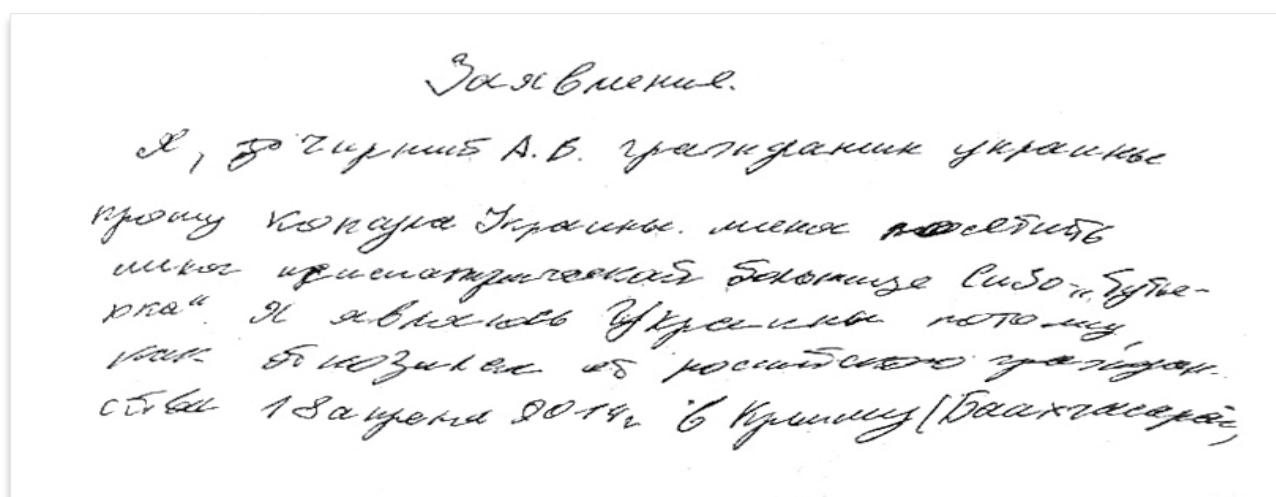
On 17 December, 2014, the Moscow City Court found Gennadiy Afanasyev guilty of participation in the activities of a terrorist group (Art. 205.4, section 2), committing two acts of terrorism (Art. 205, section 2, letter 'a'), preparation of a terrorist act (Art. 30, section 1, Art. 205, section 2, letter 'a'), as well as attempted illegal acquisition of weapons and explosives (Art. 30, section 3, Art. 222, section 3). Afanasyev was sentenced to 7 years' imprisonment to be served in a strict regime penal colony. He was also sentenced to 1.5 years of restriction of liberty following his release.²⁵

On 21 April, 2015, the North Caucasus District Military Court in Rostov-on-Don handed down a ruling in the case of Oleksiy Chyrniy. The defendant was convicted of terrorism (Art. 205, section 2), preparation of a terrorist act (Art. 30, section 1, Art. 205, section 2 of the CC of the RF), as well as the acquisition of explosives (Art. 222, section 3 of the CC of the RF). Chyrniy, similarly to Afanasyev, was sentenced to 7 years' imprisonment in a strict regime penal colony.²⁶

The trial of Oleg Sentsov and Oleksandr Kolchenko

Oleg Sentsov and Oleksandr Kolchenko did not plead guilty to the alleged offences, and so, they were tried within the same proceedings, which began on 21 July, 2015, in the North Caucasus Military District Court of Voronezh.

During the trial, key evidence of the innocence of the persons accused of terrorism was revealed, including the following:



Statement by Oleksiy Chyrniy, which indicates that he is held in a psychiatric hospital of the detention facility 'Butyrka'

²⁵ Mediazona / One of the defendants in the case of Sentsov was sentenced to 7 years' imprisonment – www.zona.media/news/pervui-iz-kryma/

²⁶ Human rights in Russia / Crimea resident Oleksiy Chyrniy was sentenced to seven years' imprisonment in a strict regime colony – www.hro.org/node/22035

- All suspects were subjected to torture, aimed at forcing them to confess to the crimes.
- All witnesses of the public prosecution were partial. They can be divided into three categories: 1. Those who have a criminal record (and, therefore, are dependent on the law enforcement agencies); 2. Those who voluntarily decided to cooperate with the FSB; 3. Secret witnesses (allegedly FSB workers).
- Evidence against Oleg Sentsov was based solely on the testimonies of Afanasyev and Chyrnyy, given under torture. In addition, Chyrnyy was held in a psychiatric hospital, where unknown drugs could have been administered to him.
- As follows from the arguments presented by the prosecution at the trial, as well as the testimonies of witnesses, the group of 'Crimean terrorists' wasn't stable, hierarchically structured and didn't operate under a single management. None of the witnesses, cross-examined in court, could state anything about the composition or the structure of the group. Gennadiy Afanasyev stated in court that he was not acquainted with Kolchenko, and he only knows Sentsov because he is a famous film director.
- During the disclosure of details of the criminal case file, it was revealed that as early as on **11 April, 2014**, workers of the security bodies were aware that Chyrnyy intended to carry out arson attacks at the office of the Russian Community of Crimea and the office of the 'United Russia' party on **14 April, 2015** and **18 April, 2015**, respectively, but they did nothing to prevent the acts. And so, it was a clear provocation by the security bodies, which did not prevent the acts in that they wished to obtain an excuse to seek criminal prosecutions.

On **25 August, 2015**, the North Caucasus Military District Court issued a guilty verdict against Oleg Sentsov and Oleksandr Kolchenko.

- **Oleg Sentsov** was found guilty of establishing a terrorist association (Art. 205.4, section 2 of the CC of the RF), committing two acts of terrorism (Art. 205, section 2, subsection 'a' of the CC of the RF), conspiracy to commit the two terrorist attacks (Art. 30, section 1 and Art. 205, section 2, subsection 'a' of the CC of the RF), as well as two episodes of illicit trafficking in arms and explosives (Art. 222, section 3 of the CC of the RF). The court sentenced Oleg Sentsov to 20 years' imprisonment in a strict regime penal colony (initially, the public prosecution had requested that he be sentenced to 23 years' imprisonment).
- **Oleksandr Kolchenko** was found guilty of involvement in a terrorist organisation (Art. 205.4, section 2 of the CC of the RF), and committing a terrorist act (Art. 205, section 2, subsection 'a' of the CC of the RF). Kolchenko was sentenced to 10 years' imprisonment in a strict regime penal colony (initially, the public prosecution had requested that he be sentenced to 12 years' imprisonment).²⁷

| The use of torture

The exertion of torture on Oleg Sentsov was reported by his counsel as early as in June 2014. On **6 August, 2015**, during the trial, Oleg Sentsov spoke in more detail about the torture which he had been subjected to. *"On 10 May, I was arrested near the entrance to my house. I was thrown*

²⁷ Hromadske.tv / In Russia, Sentsov was sentenced to 20 years in prison, Kolchenko – to 10 – www.hromadske.tv/politics/sud-rostova-viznav-vinnim-olega-sentsova/

in a bus, hooded, handcuffed and taken to the building of the Security Service of Ukraine; at that time, it was already the FSB building. They pushed me into a chair and began to interrogate me in a brutal way. They asked if I knew Chyrniy and Afanasyev. **They began to beat me, kick me, beat me using special tools, while I was standing, lying, sitting. It's hard to sit on a chair while they beat you with a baton. They tried to suffocate me with a plastic bag. When I saw this in the movies, I did not understand why people broke. What they did to me was terrible. I went through it four times. They threatened to rape me with a baton in a perverted act. This went on for three or four hours.** When they got tired, I was taken for a search, and only there did I learn that they were FSB workers”,²⁸ Sentsov testified in court.

In October 2014, Russia's Investigative Committee refused to open a criminal case with regard to the use of torture. The materials of the judgement stated that Sentsov “was fond of sadomasochism, and that the injuries to his back were inflicted on him by a female sex partner shortly before his arrest”.

Also, Oleksandr Kolchenko spoke about the exertion of torture on him: “After the arrest, during the preliminary interrogation, which was not recorded in the report, **I was beaten about the face and body...** I cannot confirm the testimony [given during the investigation – Ed.]. The counsel misled me at that time as regards the articles that I was charged under. I did not report the violence, because then, I found out what measures were used against Oleg, and I saw the pressure exerted on me as insignificant and unworthy of declaring.”²⁹

On **31 July, 2015**, one of the main witnesses in the case of Sentsov-Kolchenko, Gennadiy Afanasyev, whose testimony served to support the line of the prosecution, refused to testify against the accused. He also recanted his previous testimony, stating that he had incriminated Sentsov and Kolchenko under the pressure of torture.

Afanasyev disclosed the details of the torture he suffered in the FSB building in Simferopol. **They put a gas mask on his head, and pressed the hose; as a result, he began to choke. When he began to lose consciousness, investigators let go of the hose, pulled the mask away from his face and sprayed some gas into the space under the gas mask. As a result, Afanasyev started vomiting; he began to choke on his vomit. They would not let him breathe and they kept beating him. He was threatened with rape, stripped naked; they turned on a soldering iron and drove it around his body, explaining what will happen when they insert the soldering iron into his anus.** Afanasyev was also tortured with electric shocks. Exposed wires were put on his genitals. As a result, Afanasyev began to testify, slandering Sentsov and Kolchenko. Then, investigators began to make up more and more new episodes to which he confessed, incriminating Sentsov and Kolchenko. Also, under torture, he incriminated a few other people whose names he does not remember.³⁰

Shortly after Afanasyev recanted his testimony in the court and made a statement of torture, he was once again beaten by a Russian FSB investigator,³¹ who also threatened Afanasyev with ‘harsh conditions of detention’ during his prison term. On **20 October, 2015**, Gennady

²⁸ Radio Svoboda / “It’s hard to sit when they are beating you with a baton – www.svoboda.org/content/article/27173887.html

²⁹ Radio Svoboda / “It’s hard to sit when they are beating you with a baton – www.svoboda.org/content/article/27173887.html

³⁰ Mediazona / Gennadiy Afanasyev, convicted in the case of ‘Crimean terrorists’, spoke about torture and incriminating film director Sentsov – www.zona.media/news/afanasiev-davlenie/

³¹ Facebook / The page of Aleksandr Popkov – <https://www.facebook.com/alexander.popkov.7/posts/900242453396109?pnref=story>

Я - украинец. Мой паспорт был, есть и будет гражданским Украины. Меня и по сей день принуждают изменить гражданство, стать россиянином, но я так и не подписал никаких подобных документов, не отказался от родины. -

Горжусь, что мой народ имеет силы сбросить ядро тирании, встать с колен. Горжусь, что сам имеет силы сбросить его и со своих плеч. Впереди ещё ни один год трудностей и испытаний. Возможно ещё ни один год добавят и придётся пострадать за правду, но я это уже только рад.

An excerpt from Gennadiy Afanasyev's statement of 3 November, 2015, transferred to the defence. The statement was written by Gennadiy in the penal colony in Syktyvkar, where he was sent to serve his sentence.

Afanasyev's mother reported that her son had been taken to a strict regime penal colony in the city of Syktyvkar (northwest Russia). Shortly after his arrival at the colony, he was placed in solitary confinement (punishment cell) under the pretense that, allegedly, the search had revealed that he was carrying a blade. Gennadiy Afanasyev's mother believes that the blade was deliberately planted by the prison staff.³² After leaving the solitary confinement cell, Afanasyev was transferred to strict conditions of detention (stringent conditions include detention in a locked room and increased surveillance of his behaviour, restriction of his contact with other inmates, limits on the number of visits he could receive from relatives, as well as on the number of letters and packages he could receive).

Torture was also used against another key witness in the case of 'Crimean terrorists', Oleksiy Chyrnyy. In August 2014, Chyrnyy was held in a psychiatric hospital wing of the detention facility 'Butyrka' (Moscow). The exact time of his stay there is unknown because the Russian side keeps it confidential. Chyrnyy is the only one of the accused who was held in a psychiatric hospital. Unlawful methods of influence, including the administration of medicines, could have been applied to him there.

On 3 February, 2015, Oleksiy Chyrnyy met with Ukrainian consul Gennadiy Breskalenko in the detention facility 'Lefortovo' (this was Chyrnyy's first meeting with a Ukrainian diplomat since his arrest in May 2014). During the meeting, Chyrnyy informed the Ukrainian consul that during his detention in the Autonomous Republic of Crimea in May 2014, he was subjected to torture. In particular, he suffered blows to the head and other body parts, measures of psychological pressure and intimidation were used against him in order to compel him to give false testimony regarding the charges brought against him.

Unlike in the case of Nadiya Savchenko, the criminal cases of Afanasyev, Chyrnyy, Kolchenko and Sentsov did not receive sufficient publicity which, consequently, prevented the opportunity

³² Facebook / The page of Olga Afanasyeva – https://www.facebook.com/permalink.php?story_fbid=957082754386425&id=100002541289573

to record all violations. Public counsels, appointed to Gennadiy Afanasyev and Oleksiy Chyrniy, only formally fulfilled the role of 'defenders' and failed to provide appropriate assistance to their clients. Details regarding the course of the criminal cases were kept entirely secret. For example, the sentencing of Gennadiy Afanasyev became known only after the information was aired by the Lefortovo Court of Moscow. It was only after independent attorney Aleksandr Popkov joined the case that the incidents of torture, exerted on him, were made public. Also, only due to the fact that independent counsel Ilya Novikov joined the case of Oleksiy Chyrniy, was it revealed that torture had been exerted on the Ukrainian man, resulting in his self-incrimination during interrogation. **However, immediately after that, the counsel was removed from the case on the request of the public prosecution.**

Independent counsels of Oleg Sentsov (Dmitry Dinze and Vladimir Samokhin) and Oleksandr Kolchenko (Svetlana Sidorkina) were forced to sign a statement, prohibiting them from disclosing the criminal case file, and in this connection, the details of these cases were not disclosed. This prevented more effective protection of the Ukrainians by society.

THE CASE OF OLEKSANDR KOSTENKO

4.2



Oleksandr KOSTENKO

AGE:
29

a former employee of the
Ukrainian police, participant
in Euromaidan

The first photo taken following
Oleksandr Kostenko's arrest
in the detention facility in
Simferopol by the detainee's
counsel, Dmitriy Sotnikov on
27 February, 2015

*русская полиция моей компании в Киеве
стались, в Симферополе отказались в
и обмен, так как на мне русс
в нежелании мне давлении. В Симферополе
вину не признаю, только признаю
Контрактами Российской Федерации и отказано
и отказано*

Oleksandr Kostenko participated in protest rallies known as Euromaidan. Following the annexation of Crimea by Russia, Kostenko, fearing persecution, remained in mainland Ukraine. According to Counsel Dmitryi Sotnikov, Kostenko was kidnapped from the territory of Ukraine and transferred to the Bryansk Province of the RF. He managed to flee from his kidnappers in December 2014, and he returned to Crimea via the territory of Russia. A few days later, a man named V. Poliyenko, a former employee of the Crimean Special Police 'Berkut', who crossed over to the law enforcement bodies of the occupant, filed a claim against Kostenko, accusing him of allegedly throwing a stone at him during Euromaidan in Kyiv, when Poliyenko, as a police officer, was fulfilling his duties of 'maintaining public order'.

I Detention and torture

Oleksandr Kostenko was arrested on **5 February, 2015**, in Simferopol near the entrance to his house. Two residents of the same house witnessed the arrest. It is known that former employees of the Security Service of Ukraine, who crossed over to the service in Russia's FSB, Andrey Tishenin and Artur Shambazov, took part in the arrest. Kostenko himself recognised them, as they had already met earlier. Moreover, according to the counsel, Kostenko was involved in exposing trafficking schemes, in which the aforementioned workers of the Security Services of Ukraine and the Russian FSB had been implicated. Thus, in this story, according to Kostenko's counsel, we can also find the motives for personal revenge of Tishenin and Shambazov. During their arrest, they broke Kostenko's arm, which was later

Допрос подозреваемого Костенко А.Ф.:

05 февраля 2015 года, примерно около 16 часов я вышел из подъезда дома по улице Беспалова. Ко мне подошли два молодых человека, нанесли удары мне, после чего затолкали в машину. Свидетели этого происшествия есть. По государственным номерам данная машина не пробивается, так как она принадлежит сотрудникам ФСБ, потому что мой отец, как мне потом стало известно, узнавал номер данной машины, который узнали со слов соседей. Машина принадлежит ФСБ-шникам, бывшим СБУ-шникам. После чего, мне начали наносить удары, склоняли меня признаться, что я причинял телесные повреждения, а также оговорил не только себя, но и многих других людей, которых я знаю, и с кем дружу, со Станиславом. После чего, меня отвезли в лесополосу, поставили как я понял, в чистом поле. Это была лесополоса, так как я лежал, видел деревья. Ко мне подошел человек, приставил к моей голове пистолет. По щелчку я понял, что это пистолет. Он спустил спусковой крючок, спрашивая меня о том, буду ли я говорить, то, что они скажут? Я ответил, что буду говорить правду. Тогда мне сказали: «тогда поехали». Меня снова посадили в машину и повезли, продолжая избивать. Мне сломали руку, наступали на спину. Когда я ехал, у меня пакет был на голове, я задыхался. Я прогрыз дырку, после чего мне одели второй пакет на голову. После чего меня привезли в помещение, которое расположено в стороне Севастополя. Они сказали, что надо ехать на базу. Почему я понял, что это из ФСБ, потому что у одного из сотрудников был московский голос. Когда мы приехали на базу, у меня на голове был пакет. Меня завели в помещение, поставили на колени, привязали провода. Никаких пыток я не осуществлял, запись наложена, а видео смонтировано. Меня там не было. Мне стали говорить, чтобы я себя оговорил и сказал, что я там был. Они будут снимать на камеру, и я должен был говорить то, что я там был. У меня была сломана рука, очень сильно резало. Когда у меня сняли пакет с головы и я увидел 6-х человек, одетых в маски. Некоторых я узнал, это был старший лейтенант бывшего СБУ Шамбазов и майора Тишенин.

88

An excerpt from the transcript of the hearing on the case of Kostenko of May 2015, in which Oleksandr describes his kidnapping by the FSB, (former SBU) the first interrogation and in particular, the use of torture

confirmed by doctors. Following the arrest, Tishenin and Shambazov drove Kostenko to an unknown location where he was subjected to torture: a plastic bag was placed on his head, which prevented him from breathing, they put an unloaded gun to his head and pulled the trigger, threatened to cut off his finger and send it to relatives, beat him on the head and passed an electric current through his body. FSB officers demanded that he confessed to committing offences during Euromaidan in Kyiv.³³ The day following the actual arrest, on **6 February, 2015**, Kostenko was forced to drink 200 grams of vodka, and then taken to the FSB, which was recorded as his voluntary surrender.

All petitions and motions, which Counsel Dmitriy Sotnikov, representing the interests of Oleksandr Kostenko, filed with the competent authorities on the incidents of torture exerted on his client, were rejected. Law enforcement agencies cited that Kostenko reported to the FSB of his own accord, and that no one had held him there by force. Still, the testimonies of the witnesses regarding the kidnapping were disregarded. The FSB stated that when Kostenko reported to them, he already had multiple injuries that he had allegedly sustained the day before during an attack which was carried out on him by unknown persons.

| Criminal prosecution

Kostenko was accused, on **18 February, 2014**, of *“being aware of mass riots in Kyiv, conspired to bring about an illegal overthrow of the constitutional order (...), cast a stone at a policeman out of a sense of ideological hatred and hostility towards employees of the internal affairs bodies.”*

On **8 February, 2015**, the Kyiv District Court of Simferopol imposed a measure of restraint with regards to Kostenko in the form of detention, although he was charged with a minor offence, and he had health problems (a broken arm).

On the day of Kostenko’s detention, his apartment was searched, and as a result, the barrel of an unregistered weapon was allegedly found. It is noteworthy that the report from the object examination (of the part of the weapon found – Ed.) indicates that it was discovered on **5 February, 2015**, i.e. on the day of Kostenko’s actual detention. However, the protocol of inspection of the apartment contains a different date, namely **6 February, 2015**, which was supposed to confirm the fabricated version that Kostenko was detained on **6 February, 2015**. The discovery of parts of the weapon in Kostenko’s apartment resulted in the bringing of an additional charge of illegally possessing a firearm and its basic parts.

During the trial, no convincing evidence that Kostenko had indeed thrown a stone at a policeman was presented. The guilt of the accused was only confirmed by the testimonies of witnesses – former employees of the ‘Berkut’ militia special forces that have crossed over to the Russian police in occupied Crimea, for whom Kostenko’s conviction would be convenient. With regard to the charges of illegal possession of weapons, the witnesses at the trial stated that they had not witnessed the discovery of the weapon during the search.³⁴ This fact suggests that it could have been planted by the police officers. At the trial, Oleksandr Kostenko did not confess to the alleged crimes. He also recanted his previous testimony, citing that it had been given under the pressure of torture.

On **15 May, 2015**, the Kyiv District Court of Simferopol found Aleksandr guilty of intentionally causing minor bodily harm, resulting in a short-term health disorder, for reasons of ideological

³³ The Human Rights Centre ‘Memorial’ / Aleksandr Fedorovich Kostenko – www.memo.ru/d/238940.html

³⁴ The Human Rights Centre ‘Memorial’ / Aleksandr Fedorovich Kostenko – www.memo.ru/d/238940.html

По существу предъявленного обвинения обвиняемый показал следующее:

*От ранее данным мной показаниям в суде
 отказываюсь, обвиняемый отказываюсь в
 наличии фактов, так как на мне ранее
 осуществлялось незаконное давление. В настоящее
 время пишу не признано, желаю возмездия
 ст. 59 Конституции Российской Федерации и отказываюсь
 от ранее показаний.*

Statement of Oleksandr Kostenko, renouncing his previous testimony, given under torture

hatred or hostility (Art. 115, section 2, subsection 'b' of the CC of the RF); and illegal possession and carrying of firearms and ammunition (Art. 222, section 1 of the CC of the RF). The court sentenced him to imprisonment for a term of 4 years and 2 months in a general regime penal colony.³⁵

On **26 August, 2015**, the Supreme Court of Crimea, having considered an appeal against the sentence, reduced Aleksandr's punishment to 3 years and 11 months' imprisonment. It should also be noted that, if it hadn't been for the timely intervention of the counsel, Oleksandr Kostenko would have had every chance of being convicted on charges of terrorism. Immediately after his arrest, the Russian media reported that a group of Ukrainian nationalists, which was preparing to assassinate several people, including Sergey Aksyonov, had been exposed.³⁶ Kostenko was also allegedly a member of the said group.

At the moment, Oleksandr Kostenko is being held in penal colony № 5 of the city of Kirovo-Chepetsk of Kirov Province, Russia.³⁷ It is noteworthy that according to the laws of the Russian Federation, the convicted person must serve his sentence in a colony near his place of residence or the place of his sentencing. In the case of Oleksandr Kostenko, this would be the territory of Crimea.

The case against Oleksandr Kostenko is part of a campaign to persecute pro-Ukrainian activists in Crimea. **The dangerous trend of extending the jurisdiction of the Russian Federation for crimes committed in another state and against the citizens of that state continued.** According to the criminal case file, the offence began and ended on **18 February, 2014**, in Kyiv, at the time when the accused and the victim were citizens of Ukraine. Bringing Kostenko to criminal liability constitutes a gross violation of the norms of the Russian legislature. For example, under the Criminal Code of the Russian Federation, criminal law cannot be applied retroactively (Art. 10, section 1 of the CC of the RF). Also, according to the legislation of the Russian Federation, foreign citizens who have committed a crime outside the Russian Federation shall be subject to criminal liability under Russian law only if **crime was directed against the interests of the Russian Federation or a citizen of the Russian Federation** (Art. 12, section 3 of the CC of the RF).

³⁵ INTV / The case of Oleksandr Kostenko. Maidan activist in Crimea was thrown in jail for 4 years (video) – www.intvua.com/news/politics/1439903781-sprava-oleksandra-kostenka-aktivista-maydanu-u-krimu-kinuli.html

³⁶ Sergey Aksenov – the self-proclaimed head of the government of Crimea.

³⁷ Ukrainskaya Pravda [The Ukrainian Truth] / Euromaidan activist, convicted in Crimea, was found in the colony www.pravda.com.ua/rus/news/2015/11/11/7088384/

It is worth noting that members of Oleksandr Kostenko's family have been subjected to persecution as well. Criminal proceedings were initiated against his brother for contempt of court,³⁸ and his father, Fedor Kostenko, disappeared while crossing the border between Ukraine and Crimea under mysterious circumstances on **3 March, 2015**. Counsel Dmitriy Sotnikov was also subjected to pressure through absurd complaints against him, addressed by people such as Natalia Poklonska (General Prosecutor of annexed Crimea, appointed by the Russian authorities). However, complaints were not granted.

³⁸ Crimea. The realities. / In Crimea, a criminal case was initiated against the brother of the imprisoned activist of Euromaidan – the counsel stated – www.ua.krymr.com/content/news/27140399.html

THE CASE OF HAYSER DZHEMILEV

4.3

Photo from the family's personal archive



Hayser DZHEMILEV

AGE:
34

the youngest son of the leader of the Crimean Tatar people, Mustafa Dzhemilev.

Hayser Dzhemilev did commit a criminal offence, but his pursuit by the law enforcement bodies of Russia is politically motivated and linked to his father's status as a figurehead. His father is the leader of the Crimean Tatars, Mustafa Dzhemilev, who openly opposes Russia's occupation of the peninsula.

On 27 May, 2013, Hayser Dzhemilev, with his father's rifle, shot and killed 43-year-old Fevzi Edemov, who worked in the Dzhemilevs' house and was considered a friend of the family.

According to Hayser's family members, he had previously suffered from mental illness which could have contributed to the tragedy's occurrence. A psychiatric examination, carried out prior to the judicial proceedings, recognised Hayser Dzhemilev as mentally sane.³⁹

In November 2013, the Crimean Bakhchisarai District Court began to examine the merits of the criminal case against Hayser Dzhemilev. The public prosecutor accused him of murder, the theft of a firearm and illegal possession and storage of a firearm. Dzhemilev himself pleaded guilty to one only count – illegal possession of a weapon. *"I admit that I took the gun without permission, but I do not admit that I stole it; I admit that I illegally stored it, but I don't agree that the shot was intentional"*,⁴⁰ – Hayser Dzhemilev stated in court. He also said that he shot Fevzi Edemov by mistake: *"On the day when Fevzi came once again, I had a shotgun. I helped him around the house, then I went to watch TV, and then I began to load and unload the gun and look around through the sight of the gun. I thought that the gun was locked. When the sight focused on Fevzi, the window moved, causing the gun to fire..."*⁴¹

| The development of the case after the occupation of Crimea by Russia

Hayser Dzhemilev was held in a Bakhchisarai detention centre in Crimea and, following the occupation of the peninsula by Russia, he found himself under the jurisdiction of law enforcement and prison authorities of the Russian Federation. In April 2014, an 'investigation' into the case of Dzhemilev began anew under Russian law. At the same time, the court extended his detention.

In September 2014, Hayser Dzhemilev was transferred to the Krasnodar Krai of the Russian Federation. Mustafa Dzhemilev labelled such actions by Russia as 'an attempt to put pressure on him personally': *"He is now being taken to Russia, to Krasnodar Krai. This is designed to cause me more pain because there is no access to him, and they don't even allow counsels to see him. It turns out that they will appoint a counsel for him"*.⁴²

39 Vesti [The News] / Dzhemilev's son was recognised as mentally sane – www.vesti.ua/krym/24259-podozrevaemogo-v-ubijstve-syna-dzhemileva-priznali-psiicheski-zdorovym

40 Segodnya ['Today'] / Hayser Dzemilev reported in detail how he shot his friend to death. – www.segodnya.ua/regions/krym/hayser-dzhemilev-podrobno-rasskazal-kak-zastrelil-druga-478456.html

41 Ukrainskaya Pravda [The Ukrainian Truth] / Dzhemilev's son stated that he killed his friend by accident – www.pravda.com.ua/rus/news/2013/11/29/7003610/

42 ZN.UA / Dzemilev's son was transferred from Crimea to Russia – www.zn.ua/UKRAINE/syna-dzhemilev-vyvezli-iz-kryma-v-rossiyu-154493_.html

On 17 February, 2015, the trial of Hayser Dzhemilev was launched in the Krasnodar Regional Court. Thanks to the successful efforts of Counsel Nikolay Polozov, the case will be heard by a jury.

According to the case file, Dzhemilev was presented with charges of embezzlement, illegal possession and carrying of a firearm and ammunition, as well as the premeditated murder of a man, committed through hooliganism.⁴³ He faces a life sentence.

As a result of the hearing, the jury unanimously decided that on the charge of premeditated murder, Hayser Dzhemilev should be acquitted. In addition, the jury found him worthy of leniency on charges of theft of weapons and ammunition. As regards the charges of possession of weapons and ammunition, as well as causing death by negligence, the jury found the defendant guilty. On 10 June, 2015, the Krasnodar Regional Court, on the basis of the verdict of the jury, sentenced Hayser Dzhemilev to 5 years in prison on charges of negligent homicide (Art. 109 of the CC of the RF), as well as theft and illegal possession of weapons (Art. 226 and Art. 222 of the CC of the RF).⁴⁴ The term of his punishment will be counted from the day of his actual arrest, i.e. 27 May, 2013.

On 2 September, 2015, the jury of the Supreme Court of the Russian Federation changed the decision of the Krasnodar court in respect of Hayser Dzhemilev and reduced the sentence from 5 to 3.5 years' imprisonment. The Court decided that as regards the charge of negligent homicide, the statute of limitations had expired and, therefore, Dzhemilev should be exempted from punishment for this charge. The court also decided to mitigate the punishment for theft and illegal possession of weapons.⁴⁵

I Non-cognisability of the case in Russia

Hayser Dzhemilev is a citizen of Ukraine, as he previously filed a statement⁴⁶ renouncing his Russian citizenship. At the moment, he is registered as a resident of Kyiv. According to the legislation of the Russian Federation (Art. 12, section 3 of the CC of the RF), foreign nationals who have committed a crime outside the Russian Federation, shall be subject to criminal liability under Russian law only if: **the crime was directed against the interests of the Russian Federation or a citizen of the Russian Federation**. As at the time of the offence, the Crimean Peninsula was *de facto* and *de jure*, a part of Ukraine, and the victim, Fevzi Edemov, had Ukrainian citizenship, Hayser Dzhemilev falls under criminal liability in the framework of the Ukrainian legislation, and cannot fall under the jurisdiction of the Russian Federation. Thus, the trial of Dzhemilev in Russia is illegal.

After the annexation of Crimea by Russia, judicial examination of the case of Hayser Dzhemilev continued in Kyiv's courts.

⁴³ Úkrainskaya Pravda' ['The Ukrainian Truth'] / Dzhemilev's son will be tried by jury in Russia – www.pravda.com.ua/rus/news/2015/02/24/7059620/

⁴⁴ Mediazona / The son of a member of the Verkhovna Rada, Dzhemilev was sentenced to 5 years in prison for involuntary manslaughter – www.zona.media/news/5-let-dzhemileva/

⁴⁵ Mediazona / Supreme Court reduced the sentence of a Mustafa Dzhemilev's son, convicted of involuntary manslaughter – www.zona.media/news/smiagchil_dzhemilev/

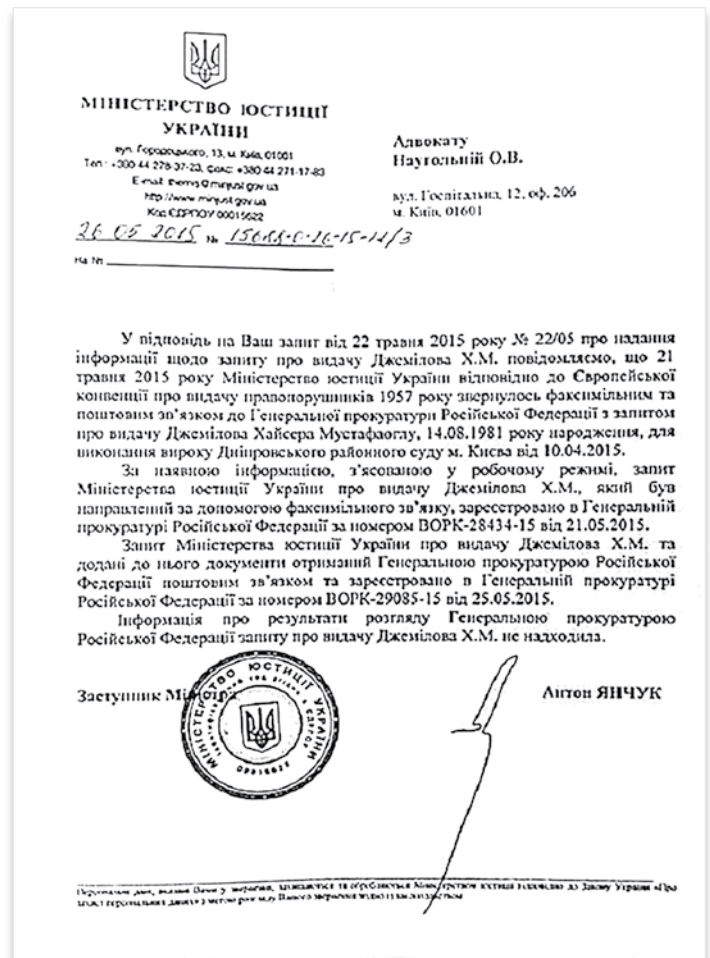
⁴⁶ According to Russian law, following the annexation of Crimea, all residents of the peninsula automatically received Russian citizenship, if they didn't refuse to accept it by filing an appropriate statement within the statutory period.

On 27 May, 2014, the Kyiv Appellate Court ruled that the period of Hayser Dzhemilev's detention in a detention facility is excessive, and ordered his release from custody.⁴⁷ In July 2014, the European Court of Human Rights ordered that Russia "ensure freedom for Dzhemilev's son".⁴⁸ **The Russian side has ignored the decision of the ECHR, thus violating international treaties with the EU.** According to Mustafa Dzhemilev, Russian investigative authorities have promised Hayser that he would be released under amnesty if he agrees to accept Russian citizenship, but Dzhemilev Jr. refused to do so, wishing to retain the citizenship of Ukraine.⁴⁹

On 10 April, 2015, the Dniprovskiy District Court of Kyiv deemed Hayser Dzhemilev guilty of embezzlement, illegal possession of weapons and ammunition, as well as negligent homicide. The court sentenced him *in absentia* to 3 years and 8 months in prison. The sentence came into force in May 2015.

On 21 May, 2015, the Ministry of Justice of Ukraine, in accordance with the European Convention on Extradition of 1957, appealed to the General Prosecutor's Office of the Russian Federation with a request that Hayser Dzhemilev be subjected to extradition in order to serve the sentence, handed down by the district court.⁵⁰ The Russian side has not yet responded to the request.

On 27 May, 2015, the Krasnodar Regional Court of the RF rejected the request of Counsel Nikolay Polozov, regarding the dismissal of the criminal case against Hayser Dzhemilev due to his previous sentencing.⁵¹ Thus, another important legal principle was violated, as no one may be convicted twice for the same offence.



Document of Ukraine's Ministry of Justice, confirming that the Ukrainian side addressed Russia with a request for the extradition of Hayser Dzhemilev

- 47 Glavcom [‘The Commander’] / Representative of Ukraine in the European Court Natalia Sevostyanova: Russia is responsible for every death in the Donbas – www.glavcom.ua/articles/25118.html
- 48 Ukrainskaya Pravda [‘The Ukrainian Truth’] / / Dzemilev addressed the European Court on behalf of his son, who was put in jail and is now subjected to blackmail in Crimea – www.pravda.com.ua/rus/news/2014/07/16/7032085/?attempt=1
- 49 LIGA.Novosti / Dzemilev's son was offered amnesty in exchange for Russian citizenship -www.news.liga.net/news/politics/2551718-synu_dzhemileva_predlagali_amnistiyu_v_obmen_na_grazhdanstvo_rf.htm
- 50 ZN.UA / Ukrainian court sentenced Dzemilev's a request for his extradition was sent to the Russian Federation www.dt.ua/UKRAINE/ukrayinskiy-sud-vinis-virok-sinovi-dzhemilyeva-v-rf-napravili-zapit-na-ekstradiciyu-nardep-174000_.html
- 51 Ukrainskaya Pravda [‘The Ukrainian Truth’] / Russian court refused to dismiss the case against Dzhemilev's son – www.pravda.com.ua/rus/news/2015/05/27/7069308/

| The political nature of the case

A number of violations in the case of Hayser Dzhemilev indicate the political nature of his prosecution. Hayser Dzhemilev has become a hostage, whom Russia tried to use in order to exert pressure on his father Mustafa Dzhemilev.

Mustafa Dzhemilev is a human rights activist, dissident and one of the leaders of the Crimean Tatar nation. For many years, he has been the leader of the Crimean Tatar national movement. Like the majority of the Crimean Tatars, Mustafa Dzhemilev opposed the occupation and annexation of the Crimean Peninsula by Russia. As a result, Russia has attempted to exert pressure on Dzhemilev by prosecuting his son in order to prompt him to change his position regarding Crimea. Dzhemilev himself stated that he would not give in to blackmail: *“It’s outright blackmail, because they didn’t have the right to keep my son in detention. A Ukrainian court ruled that it was not murder, but rather careless handling of weapons. There is also a decision of the European Court of Human Rights regarding his release from custody, because his case does not fall under the Russian law”*.⁵²

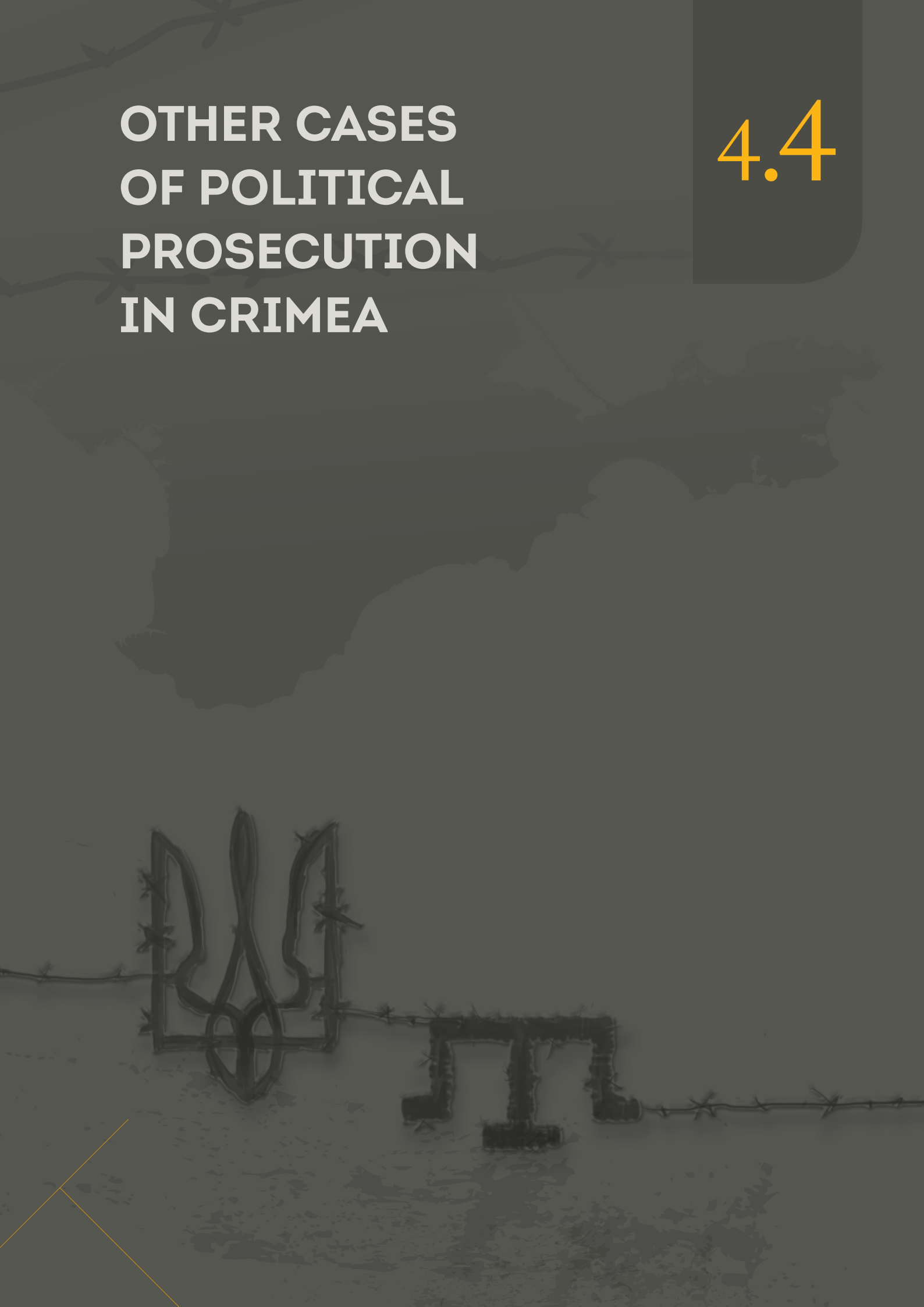
On **26 September, 2015**, it was announced that Hayser Dzhemilev had been transferred to Astrakhan Province in the south-west of the Russian Federation. His relatives were not officially notified about the place to which Dzhemilev was transferred. According to Russian law, he must serve his sentence in a prison near his place of residence (in Crimea), or near the place of sentencing (Krasnodar Krai). According to Counsel Nikolay Polozov, the illegal transfer of Dzhemilev to another region is a politically motivated decision of the Russian authorities prompted by Mustafa Dzhemilev’s principled position regarding the occupation of the Crimean peninsula by Russia.⁵³ Currently, Hayser Dzhemilev is being held in penal colony № 10 in the city of Astrakhan. It should be noted that Mustafa Dzhemilev is prohibited from entering the territory of the Russian Federation.

⁵² Dzhemilev is hoping for a compromise with Putin regarding the release of his son – www.pravda.com.ua/rus/news/2014/10/4/7039793/

⁵³ Facebook / The page of Nikolay Polozov – <https://www.facebook.com/nikolay.polozov/posts/919166071482123>

OTHER CASES OF POLITICAL PROSECUTION IN CRIMEA

4.4



| The case of Yuriy Ilchenko

Yuriy Ilchenko was detained on suspicion of extremism in Sevastopol on **2 July, 2015**. He was accused of using inflammatory words to condemn the Russian occupation of Crimea and the war that the Kremlin is waging in the Donbas in an article on his blog.⁵⁴ Since **3 July, 2015**, Ilchenko has been held in a detention centre in Simferopol's SIZO-1. On **23 September, 2015**, the period of his detention was extended for a further two months.



Yuriy Ilchenko – aged 37, owner of a private school for foreign languages, blogger.

It is not known exactly which article of the Criminal Code is incriminated to Yuriy Ilchenko. Initially, the media reported that the investigation was conducted by the Investigative Committee of the Russian Federation. Based on this fact, it can be concluded that Ilchenko was presented with charges under Art. 282 of the CC of the RF ('inciting hatred or enmity'). Later, it was stated that the case is run by the FSB. This suggests that the blogger is accused of offences under Art. 280 of the CC of the RF ('public incitement to extremism'). The sanction for both articles is up to five years in prison. In addition, the FSB is striving to accuse Ilchenko of 'pedophilia'. State security agencies have installed a hidden camera in the premises of his school, which supposedly recorded the moment when he kissed a 12-year-old girl on the cheek. Yuriy's family members reported that he is friends with the girl's mother. Later it became known that the security services forced the girl's mother to write a denunciation of Yuriy.⁵⁵

Through provocations, security agencies also intended to bring charges of 'terrorism' against Ilchenko. A week before his arrest, in the street, he was approached by an unknown woman with a proposal to disseminate leaflets calling to repel the invaders and to arrange explosions in Sevastopol. Ilchenko bluntly refused to do so.⁵⁶

In late July 2015, the Crimean human rights activist Oleg Sofyanik stated that, according to his information, Ilchenko is being subjected to torture. *"He (Ilchenko – Ed.) is now being tortured in the detention centre, he is being beaten. They broke his spine, injured his kidneys as a result of battery, and he probably won't remain alive until the court hearing"*,⁵⁷ Sofyanik stated.

| Criminal prosecution of participants of the pro-Ukrainian rally in Simferopol

On **26 February, 2014**, near the building of the Supreme Council of the Autonomous Republic (AR) of Crimea, pro-Ukrainian activists held a mass rally for the unity of Ukraine. At the same time, counter-meetings were taking place near the building of the Supreme Council of Crimea; one of the meetings was attended by representatives of pro-Russian organisations who demanded that Crimea join Russia. Due to ineffective actions of the police to ensure the safety of a peaceful assembly, a scuffle broke out between participants of the rallies during which 30 people were

⁵⁴ Grani.ru / Dont' stay with those whom you don't love – www.grani.ru/Politics/World/Europe/Ukraine/m.242684.html

⁵⁵ Grani.ru / Yuriy Ilchenko – www.grani.ru/people/2496/

⁵⁶ Crimea. The realities / In Sevastopol, the FSB arrested another extremist' – www.ru.krymr.com/content/article/27118233.html

⁵⁷ Grani.ru / Human rights defender: Political prisoner Ilchenko may not remain alive until the court hearing – www.grani.ru/Politics/World/Europe/Ukraine/m.243201.html

injured. Thus, the participants sustained head injuries, blunt abdominal traumas, etc.; 6 people were admitted to hospital with severe and moderate injuries.

A number of criminal proceedings were initiated against participants in the pro-Ukrainian meetings following the event of **26 February, 2014**. The offences, most frequently incriminated by the self-proclaimed authorities to protesters, include: participation in mass riots (Art. 212 of the CC of the RF), which is punishable by a term of up to 10 years. In this case, detained and subsequently released on bail were **Eskender Kantemirov** (arrested on **7 February, 2015** and released on **6 April, 2015**) **Eskender Emirvaliyev** (arrested on **18 February, 2015** and released on **17 April, 2015**), **Talyat Yunusov** (arrested on **11 March, 2015** and released on **8 September, 2015**).

At the beginning of 2015, i.e. nearly a year after the events occurred under the government of the Supreme Council of Crimea, three Crimean Tatars, namely: **Akhtem Chiyhoz** (born 1964), **Ali Asanov** (born 1982), **Mustafa Dehermendzhi** (born 1989) were arrested and, as of today, they remain in custody.

Ali Asanov, a Crimean Tatar, resident of the village of Urozhayneye, was detained on **16 April, 2015**. Prior to his arrest, he worked as a farmer and supported three children (his fourth child was born following his arrest), his wife and his disabled father. He was not engaged in social activism, the entirety of his work was aimed at supporting his family. Ali is accused of participating in the riots and has been charged under Art. 212, section 2 of the CC of the RF. The defence argues that Ali Asanov's actions bear no legal components of the alleged crime. At the same time, Ali admits to participating in the peace rally of **26 February, 2014**, but he denies any wrongdoing.



Ali Asanov



Akhtem Chiyhoz



Mustafa
Dehermendzhi

Mustafa Dehermendzhi, a Crimean Tatar, was detained on **7 May, 2015**. He is also accused of participating in the riots under Art. 212, section 2 of the CC of the RF. The main evidence, cited by the so-called investigative authorities, takes the form of video footage which allegedly features Mustafa. The defence insists that the video, presented as evidence in the criminal proceedings, does not prove that the suspect participated in the riots, as the acts it depicts, occurred well in advance of the time that the scuffle between the participants of both rallies broke out.

Akhtem Chiyhoz, a Crimean Tatar, Deputy Chairman of the Majlis of the Crimean Tatar People, was detained on **29 January, 2015**. He was engaged in public activity, which distinguishes him from other defendants in the case, and which, to some extent, explains the increased interest of law enforcement bodies in him. Akhtem Chiyhoz doesn't deny his participation in a peace rally near the Supreme Council of the Autonomous Republic of Crimea on **26 February, 2014**. At the same time, the video, presented by the Investigative Committee, which constituted a major part of the evidence base used to establish his guilt, does not show Akhtem Chiyhoz committing any violent acts. Nevertheless, he is accused of committing a serious crime, namely: the organisation of mass riots (Art. 212, section 1 of the CC of the RF).

Indicative is the fact that in its procedural documents, the Investigative Committee uses such terminology as 'unauthorised meeting', which is untrue, as Ukrainian law provides for the provision of a notification of the intention to carry out a peace rally, and, according to Art. 39 of the Constitution of Ukraine, a restriction of the right to peaceful assembly may only be ordered by a court. The notification informing of the intention to carry out the meeting of **26 February, 2014**, was filed on the morning of the same day. In this context, attention must be paid to the fact that the criminal proceedings, which are being considered under the law of the Russian Federation, were initiated on charges of committing offences during the events of **26 February, 2014**, i.e. before the annexation of the peninsula, the apogee of which was the so-called referendum of **16 March, 2014**. Thus, the events actually took place on the territory of Ukraine.

One of the main arguments, used by the defence in the case, is the absence of the composition of the alleged offence, in the part regarding the absence of the subjective side of the action; the so-called investigative authorities have not provided evidence to show the existence of intent in the actions of these persons. Thus far, one of the defendants in the case 'on the unrest in Simferopol of **26 February, 2014**' has been convicted. On **12 October, 2005**, 29-year-old **Eskender Nebiyev**, who had previously worked as a camera operator of the Crimean Tatar television channel ATR, was sentenced by the Central District Court of Simferopol to 2.5 years' imprisonment with a conditional suspension of the punishment for a probation period of 2 years. He was also accused of participation in mass disorders (Art. 212, section 2 of the CC of the RF).⁵⁸

Only pro-Ukrainian participants of the rally were subjected to criminal prosecution. Also, it should be noted that it is only those suspects who did not admit their guilt in terms of participation/organising riots, that are held in custody. At the same time, they all admit to participation in the rally of **26 February, 2014**.

The Crimean Field Mission has not recorded any cases of detentions or arrests of participants of the counter-meetings. According to a Member of the Mejlis of the Crimean Tatar nation, Nariman Dzhelyal, participants in the counter-meeting have not been brought to justice; on the contrary, they also are involved in the case as victims.⁵⁹

| Persecution due to religious beliefs

The self-proclaimed authorities of annexed Crimea have begun to persecute people on religious grounds. On **23 January, 2015**, near Sevastopol, members of the Islamic organisation 'Hizb ut-Tahrir', Crimean Muslims: **Ruslan Zeytullayev, Nuri Primov and Rustem Vaitov were detained**. On **2 April, 2015**, another member of this organisation, **Feram Sayfullayev**, was detained. They are all accused of organising (**R. Zeytullaev**) and participating (N. Primov, R. Vaitov, F. Sayfullayev) in the organisation of the group 'Hizb ut-Tahrir', recognised in the Russian Federation as a terrorist organisation by decision of the Supreme Court as of **14 February, 2003**. According to Art. 205.5, section 1 and Art. 205.5, section 2 of the CC of the RF, they face from 5 to 20 years' imprisonment or life imprisonment. The investigation into the case is being carried out by the Federal Security Service of Crimea. It should be noted that in Ukraine, the organisation 'Hizb ut-Tahrir', engaged in religious, political and educational activities, acts freely. According to the general ideas of Western democratic countries, the organisation is not extremist. However,

⁵⁸ Centre for Investigative Journalism / Eskender Nebiyev, involved in the case '26 February', was sentenced to 2.5 years imprisonment with a conditional suspension of the punishment- www.investigator.org.ua/news/165606/

⁵⁹ Ukrainskaya Pravda [The Ukrainian Truth] / In the case of '26 February', the Crimean Tatars are tried, while participants of the second meeting are involved in the case as 'victims' – www.pravda.com.ua/rus/news/2015/10/14/7084818/?attempt=1

following the occupation of Crimea by the Russian Federation, the organisation 'Hizb ut-Tahrir' has been banned, and thousands of its supporters face criminal prosecution.

At the same time, Counsel Emil Kurbedinov, who is the defender of Ruslan Zeytullayev, insists on the absence of *corpus delicti* in his client's actions. Moreover, according to counsels and relatives, the investigative authorities have no evidence linking any of the four suspects to the activities of 'Hizb ut-Tahrir', and searches, carried out within the criminal proceedings, revealed no evidence linking the detainees to the said organisation.

Thus, there is a dangerous trend of systematic persecution of Crimean Muslims on religious grounds. According to some observers, any inconvenient Crimean Muslim can be included in the case now; this practice has also been adopted by the special services of the Russian Federation in the Caucasus previously, when representatives of some nations were portrayed by the media as terrorist/extremist.

The annexation of Crimea was followed by a wave of oppression of citizens who openly state their pro-Ukrainian position and oppose the occupation of the peninsula. Laying flowers at the Shevchenko monument,⁶⁰ or wearing Ukrainian symbols⁶¹ have become sufficient reasons for arrest. Security agencies of the Russian Federation, as well as the so-called 'Self-defence of Crimea' are striving to prevent any dissent in the occupied peninsula.

Unfortunately, the true extent of oppression of civil society activists remains unknown, as the work of independent media and observers in Crimea has been virtually reduced to zero due to the high degree of risk.

In addition to violations of the freedom of speech and thought, the right of the Crimean people to free movement and residence on the peninsula has also been violated. Thus, residents of Crimea, who did not want to accept Russian citizenship, could be expelled from the peninsula, if they do not receive a permit for temporary residence on the 'territory of the Russian Federation'.



Rustem Vaitov



Ruslan Zeytullayev



Feram Sayfullayev



Nuri Primov

⁶⁰ Nezavisimoye Byuro Novostey [Independent News Bureau] / Two activists were detained near the Shevchenko monument in occupied Crimea – www.nbnews.com.ua/ru/news/158951/

⁶¹ Segodnya [Today] / In Crimea, a teenager was arrested for wearing the emblem of Ukraine and 'Azov' stickers – www.segodnya.ua/regions/krym/v-krymu-zaderzhali-podrostka-za-gerb-ukrainy-i-nakleyki-azova-637536.html

THE CASE OF SERHIY LYTVYNOV

5

Screenshot from the 'Russia 1' video channel



**Serhiy
LYTVYNOV**

AGE:
32 ГОДА

a resident of
Lugansk Province.

Serhiy Lytvynov lived in the Komyshnoye Stanichno village in Lugansk Province, along with his common-law wife and 14-year-old daughter; he worked for a local businessman, doing odd jobs. He completed 7 years of primary education and, according to villagers, barely mastered the ability to read and write; he suffered from diseases related to malformations, and for this reason, was not liable for military service.

| Charges of war crimes

On **12 August, 2014**, according to the testimony of the village paramedic, Serhiy Lytvynov went to the hospital of Rostov Province in order to seek dental assistance, as all the nearby medical institutions on the territory of Ukraine were inaccessible due to military operations. At the hospital, he was diagnosed with periostitis, consequently, he needed surgery. Lytvynov was admitted to hospital and spent several days there.

On **21 August, 2014**, Serhiy Lytvynov was taken by unknown masked men from the hospital and transferred to the Rostov Regional Directorate for Combating Organised Crime (RDCOC).

On **29 September, 2014**, the Investigative Committee initiated a criminal case on charges of 'genocide' of the Russian-speaking population in south-eastern Ukraine,⁶² and a day later, Lytvynov was formally arrested. He was accused of committing dozens of assassinations and rapes in the south-east of Ukraine, which he had, allegedly, committed on the orders of the management of the Ukrainian battalion 'Dnepr-1' and Igor Kolomoysky personally. As soon as on **14 October, 2014**, he was transferred to Moscow for a comprehensive psychological and psychiatric examination; based on the results of the examination, he was deemed sane.

Денежные средства в неизвестных мне объемах, то есть суммах передавались, в моем отряде лично И. Коломойским через командование, а именно через Миляшкина В.А. Денежные средства Коломойский привозил в основном в ночное время не далеко от места дислокации отряда.

An excerpt from Serhiy Lytvynov's testimony, laid out in one of the interrogation protocols, drawn up in the summer of 2014. Later, an expert examination determined with 73% probability that the materials of the case had been doctored, and that S. Lytvynov had given testimony under torture

During the investigation, Serhiy Lytvynov incriminated himself, 'confessed' to committing a number of grave crimes in Lugansk Province, namely: the assassination of 39 men, the rape and murder of eight women and the assassination of a 12-year-old girl. Lytvynov also reported that the orders, given to him by the leadership of the battalion 'Dnepr-1' were aimed *"exclusively at deteriorating the demographic situation among the Russian-speaking population"*. As an incentive, battalion soldiers were allegedly paid cash rewards, *"calculated depending on*

⁶² The Investigative Committee of the Russian Federation / Investigative Committee initiated a criminal case on genocide of the Russian-speaking population in the south-eastern Ukraine – www.sledcom.ru/news/item/523738

the number of people killed by each of them during mopping-up operations". According to the case file, Igor Kolomoyskiy "personally delivered the money to soldiers".⁶³ Lytvynov was charged with the murder of two or more people (Art. 105, section 2 of the CC of the RF), and the use of prohibited means and methods of warfare (Art. 356, section 1 of the CC of the RF), and he faced life imprisonment.

On 10 November, 2014, after a meeting with Ukrainian consul, Lytvynov recanted his previous testimony, claiming that he had been subjected to torture. He also refuted the allegations about his involvement in the battalion 'Dnepr-1', which was confirmed by the statement of the Armed Forces of Ukraine.⁶⁴

I Fabrication of the charges

Following the examination and the obtainment of additional data from the competent authorities of Ukraine, the indictment basis was severely fractured. The fabrication of the criminal case against Lytvynov was confirmed by the following facts:

- The defence puts into question the authenticity of the protocols of interrogation of the accused. Serhiy Lytvynov, who only completed 7 years of primary school and is barely able to provide his personal data, suddenly begins to employ complex grammatical structures with the use of specific criminological lexicon in the interrogation protocol.

В ходе проверки прокуратурой Луганской области доводов относительно совершения уголовных правонарушений отдельными служащими батальона «Днепр» установлено, что лица указанные в качестве вероятных жертв и потерпевших от преступлений, никогда не проживали и не были зарегистрированы на территории Станицно-Луганского, Попоснянского районов и города Лисчанск. Обращения в правоохранительные органы или в лечебные учреждения с заявлениями о совершении таких противоправных действий не зарегистрированы. Тела погибших лиц, которые указаны в документах, в медицинские учреждения не доставлялись.

Кроме того, отдельные адреса, приведенные в процессуальных документах, где якобы происходили описанные противоправные действия (Станицно-Луганский район, с.Широкое, ул.Молодежная, 35), не существуют. В отдельных изложенных фактах также отсутствуют данные о времени и месте совершения вероятных преступлений.

An excerpt from an official response from the General Prosecutor's Office, received on the request of S. Lytvynov's defender and transferred to the counsel by the Ukrainian Embassy in the Russian Federation in August 2015

⁶³ Úkrainskaya Pravda' ['The Ukrainian Truth'] / A 'punisher', who is afraid to kill a chicken – www.lifepravda.com.ua/society/2015/07/28/197778/

⁶⁴ Facebook / The page of Anton Gerashchenko – <https://www.facebook.com/anton.gerashchenko.7/posts/733746226712227>

- Serhiy Lytvynov's counsel, Viktor Parshutkin managed to obtain information indicating that the persons and a number of addresses, indicated in the case file, in fact, never existed on the territory of Stanichno Lugansk district of Lugansk Province. People listed in the indictment by name had never lived there and had never been registered there. Their corpses were never taken to the morgue.⁶⁵ Accordingly, in reality, no victims exist in this case.
- According to the adviser to the Minister of Internal Affairs of Ukraine Anton Gerashchenko, the battalion 'Dnepr-1' was deployed solely within the territory of the Western Donbass and never carried out military operations on the territory of Lugansk Province, as was stated in the case file.
- In accordance with the results of the comprehensive psychological and psychophysiological forensics (including a polygraph test), initiated directly by the investigation department of the Investigative Committee of the Russian Federation, *"72% of the mental and physical reactions of the accused indicate that he did not participate on orders in executions, committed either independently or as part of a group, he did not receive orders to kill women and children, he did not take part in the assassinations or rapes of women and children, he did not receive orders to take part in mopping-up operations in residential areas; he was not trained in the battalion 'Dnepr-1' and he did not receive offers to join it"*.

| Torture

In addition to the aforementioned evidence of the fabrication of the case, there is one more important circumstance which casts doubt on the guilt of the suspect. Like in many other 'Ukrainian cases', the indictment basis in the case of Lytvynov is largely constructed on the confession of the defendant himself. However, Lytvynov's statement of torture and obvious traces of violence on his body indicate that illegal methods of investigation were used against Lytvynov.

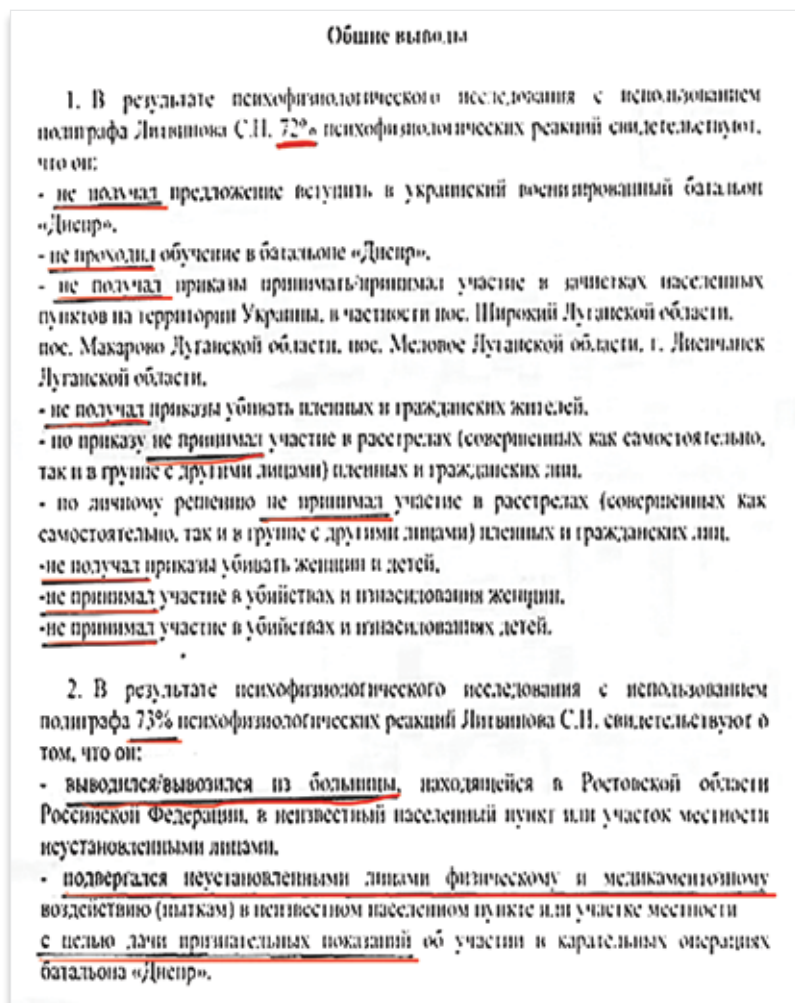
During the meeting with the Consul General of Ukraine, Serhiy Lytvynov stated that he had incriminated himself under torture; in this connection, the Embassy of Ukraine in the Russian Federation sent an official notice of protest. As reported by Serhiy Lytvynov to Elena Masuk, a member of the Public Oversight Commission of Moscow and a member of the Presidential Council for Civil Society Institutions and Human Rights, after his arrest, the FSB workers transported him to a wooded area, where he was subjected to severe violence: he was tied to a tree upside down, tortured with electric shocks, beaten on various parts of his body, a gun was fired close to his ear and he was stabbed in the ribs.

The polygraph test confirmed that prohibited methods of physical and psychological pressure were used on Lytvynov.

Initially, Parshutkin's submitted statement on the falsification of evidence under the influence of torture, was rejected due to lack of evidence, but after the appearance of the polygraph test results, the court initiated a criminal case, which is currently under consideration.

⁶⁵ Otkrytaya Rossiya ['Open Russia'] / Torture, 'Kalashnikov' and a car on a tow rope. The collapse of the case of a Ukrainian punisher – <https://openrussia.org/post/view/10295/>

Reclassification of charges



Results of psychological and psycho-physiological examinations

Under Russian law, if the accused faces life imprisonment, he may apply to the court for trial by jury.

Realising that the case on 'war crimes' is not based on conclusive evidence, and in the case of its consideration by the jury, Lytvynov will be acquitted, the investigating authorities of the Russian Federation didn't submit the indictment to the court. However, in order to prevent the release of Lytvynov, on **10 September, 2015**, the IC of the RF brought charges of robbery against Lytvynov. According to investigators, Lytvynov, along with two armed accomplices, allegedly stole two used cars from a Russian citizen, who, at that moment, was on the territory of the so-called 'People's Republic of Lugansk'.⁶⁶

According to Counsel Viktor Parshutkin, the case of robbery is also fabricated, as the nationality of the victim raises doubts, and the fact of the commission of the crime has not been fully established.

There is no single piece of evidence to corroborate the victim's account, apart from his own testimony. Evidence of unjustifiability of robbery charges were provided to investigators at the end of November 2015.

According to the General Prosecutor's Office of Ukraine and the Prosecutor's Office of Lugansk Province, the victim of the theft of the car is a Russian citizen who owns a private house on the territory of Lugansk Province; during the commission of the alleged 'crime', he was not in the house. At that time, his house was abandoned and boarded up. In addition, the stolen car had actually been registered in the name of a Ukrainian citizen; in 1997, it was removed from the register of the traffic police and, currently, its registration number is assigned to a car of a different make, which was stolen and is yet to be found. The victim has presented his insurance policy, issued in the name of a different citizen of Ukraine, as evidence regarding the second car, allegedly stolen by Lytvynov.⁶⁷

⁶⁶ Facebook / The page of Viktor Parshutkin –

https://www.facebook.com/permalink.php?story_fbid=1049304438426941&id=100000421857890

⁶⁷ Otkrytaya Rossiya ['Open Russia'] / Torture, 'Kalashnikov' and a car on a tow rope. The collapse of the case of a Ukrainian punisher – <https://openrussia.org/post/view/10295/>

At the moment, even with the re-qualification of charges, it is likely that the case will not be referred to court, as the indictment bases of both the first and the second cases do not hold water.

The number of violations and contradictions in the case of Serhiy Lytvynov clearly indicates that it was trumped up. Even the victims of the 'crimes' were invented. All this was done with a single goal – to create an image of 'brutal' crimes, committed by the Ukrainian army in the south-east of the country. However, due to its absurdity, the case transpired to be unfit for the intended propaganda purposes, and it has not progressed further.

As it transpired during the preparation of this report for printing, the Investigative Committee of the Russian Federation itself admitted the unjustifiability of the charges, and, on **30 November, 2015**, it handed down to counsel Viktor Parshutkin, a decision to discontinue the criminal proceedings against Lytvynov, justifying it with the following wording: *"...the investigative bodies concluded that the charges of committing a crime, punishable under Article 105, section 2, letters 'a', 'zh', 'l', and Article 356, section 1 of the CC of the RF, brought against S. N. Lytvynov, have not been substantiated with sufficient evidence, while the evidence obtained do not suggest S. N. Lytvynov's involvement in the alleged crime, and opportunities for generating new evidence have been exhausted."* However, at the same time, charges of robbery, presented to Lytvynov, remain valid. However, Lytvynov's counsel hopes that his client will soon be released, as in his case, **20 February, 2016** is the final date of the statutory period of 18 months, provided for in the legislation of the Russian Federation for pre-trial investigation against the detainee.

THE CASE OF YURIY YATSENKO AND BOHDAN YARICHEVSKIY

6

Photo: Ukraine Crisis Media Center



Bohdan YARYCHEVSKIY

AGE:
26

a graduate of the
National University of Lviv,
participant in Euromaidan.

Yuriy YATSENKO

AGE:
25

a graduate of the
National University of Lviv,
participant in Euromaidan.



Photo: Ukraine Crisis Media Center

In May 2014, Yuriy Yatsenko and Bohdan Yarychevskyi were detained by police officers in Kursk Province (Russia). Despite the court order to expel the young people from the country, Bohdan and Yuriy were held in custody for 4 and 12 months, respectively, in the absence of any grounds.

Currently, the case of Yuriy Yatsenko and Bohdan Yarychevskyi is unprecedented among a number of 'Ukrainian cases' due to its positive outcome.

| Detention

Over the years 2013-2014, Yuriy Yatsenko repeatedly travelled to Russia in connection with petty trade ('shuttle trade') – he resold equipment, purchased in one country, at a higher price in the other country. During his last trip, he was joined by Bohdan Yarychevskyi. On **5 May, 2014**, they both arrived in the city of Oboyan (Kursk Province, Russia). When registering at the hotel reception, they handed over their passports. The next morning, the two Ukrainians were detained by the police in the hotel building.

During their interrogation at the police station,⁶⁸ the young men were subjected to pressure, aimed at forcing them to confess to the involvement in the 'Right Sector' or the Security Service of Ukraine. They were pressured into confessing to their participation in anti-Russian activities on television and publicly renouncing their Ukrainian citizenship. Yuriy and Bohdan refused to do so, and, as a consequence, they were beaten for three days. Then, they were transferred to the district department of the FSB Directorate in Oboyan.

| An administrative offense and a failed expulsion

After several days of psychological and physical pressure, the young men appeared in court, where the case on violation of immigration legislation was considered. By the decision of the court of **8 May, 2014**, they were obliged to pay a fine of 2,000 rubles (approx. 30 euros) and their forced expulsion from the country was to be carried out within 10 days. However, after this period of time had elapsed, the ruling had still not been executed.

It should be noted that for all this time, Yuriy and Bohdan were systematically refused access to a lawyer, they were also prohibited from making a phone call to their family members. In Ukraine, no one knew of their fate until Yuriy was successful in getting a message out the prison via a cellmate, who was released from prison.

Information leakage allowed the launch of a campaign in support of Yuriy and Bohdan. The Russian side began to be subjected to informational pressure. On **6 June, 2014**, during his first visit to the detention facility to visit the detainees, Consul of Ukraine Gennadiy Breskalenko confirmed the presence of external signs of violence on their bodies. On **9 June, 2014**, another expulsion was appointed; however, once again, it was not executed.

⁶⁸ Den ['The day'] / The case of a Lviv hostage student in Russia – www.day.kyiv.ua/uk/article/podrobitci/sprava-lvivskogo-studenta-zaruchnika-v-rosiyi

The third attempted expulsion took place on **8 August, 2014**. At the 'Fudzha' border check-point, the transfer of Yuriy and Bohdan to their parents was to be carried out. Both parties arrived at the site, but at the last moment, the car carrying the Ukrainians turned back under the pretext of forgotten documents. The car returned to the detention facility, where a criminal case was initiated against Yuriy Yatsenko on charges of smuggling explosives (Art. 222, section 1 of the CC of the RF). On **12 August, 2014**, Bohdan Yarychevskiy was eventually expelled from the country.

| Fabrication of charges

From the beginning, Yuriy Yatsenko and Bohdan Yarychevskiy were presented with unfounded charges, and the criminal case was fabricated, which is evidenced by the following facts:

- The first examination with the transfer to the police unit, the taking of fingerprints, the search for weapons and tattoos, as well as the thorough examination of Yuriy and Bohdan's user accounts on social networks, as well as partial questioning regarding their participation in Euromaidan serves as evidence of bias on the basis of the fact that both men are registered as residents of Lviv — a city that is presented in the Russian media as a bastion of Ukrainian nationalism and Russophobia.
- The failure of migration officials to execute the court decision regarding the expulsion of aliens within 10 days is a gross violation of Russian migration legislation, as was the denial of the right to make a phone call to family members and the right to allow the detainees to appoint an independent legal counsel.
- According to Yuriy, from time to time, people were placed in his cell in order to provoke him.⁶⁹ They made efforts to compel him to confess to xenophobia against the Russian population and participation in the violent overthrow of the government in Kyiv during Euromaidan. In addition, they were striving to convince Yuriy that he had to make a deal with the investigative bodies and appear on television.
- All the accusations of illegal possession of explosives, brought against Yuriy Yatsenko by the investigative bodies, were based on the testimony of a taxi driver. According to his testimony, in November 2013, he allegedly received a bag, which Yuriy had left with him for safekeeping. According to the testimony of the taxi driver and his colleague, the primary inspection of the contents of Yuriy's bag showed that there was nothing illegal inside. However, later, during the inspection of the bag by investigating authorities, 40 grams of gun powder in its original packaging having the inscription 'gunpowder' was revealed. Subsequently, the taxi driver recanted his previous testimony against Mr. Yatsenko. Yuriy did not deny that during that period, he was in the Russian Federation, however, he stated that he did not know the taxi driver and had not left a bag in his care.
- The Belgorod Court of first instance distorted the contents of the expert conclusions in sentencing. In accordance with the examination, the hunting gunpowder was not considered an explosive in the form in which it was found — it was in its original packaging, which was opened for the first time by the expert in order to carry out the examination. In addition, according to the law of the Russian Federation, possession of hunting ammunition is not a criminal offence. Based on the jurisprudence of the Supreme Court of the Russian Federation, citizens, previously tried under similar circumstances, were acquitted.

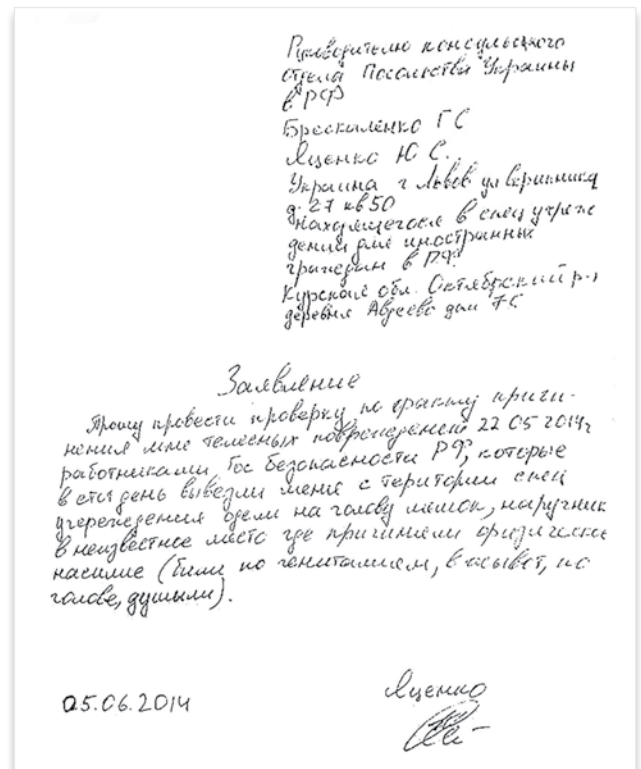
⁶⁹ Reporter / The story of a political prisoner. Yuriy Yatsenko about 368 days in a Russian prison – www.report.if.ua/lyudy/istoriya-odnogo-politvyaznya-yurij-yacenko-pro-368-dniv-u-rosijskij-vyaznyci/

Torture and self-mutilation

Despite the happy ending, the story of the two students was blighted by their ill-treatment. From the very first day, the young people were subjected to psychological pressure in a bid to coerce them into incriminating themselves. As the young men were walking through the corridors of the detention centre, prison guards would shout: “We are escorting *Bandera followers and the Nazis who killed our women and children with phosphorus bombs.*” They were blackmailed, threatened and attempts to bribe them to make a public statement on television were carried out. They were tortured using starvation, strangulation, beatings to the head, abdomen and genitals whilst a bag was placed over their heads and they were bound with adhesive tape, as well as subjected to the close-range firing of empty rounds.

In order to prevent further torture, Yuriy and Bohdan decided to take extreme measures – they cut themselves in the abdomen and slashed their wrists. Having carried out the plan, Yuriy refused to allow anyone to give him medical care until he was given the opportunity to make a phone call. Subsequently, he kept a blade, and in the case of every potential danger, he threatened to commit suicide.

During the administration of first aid to Yuriy, the surgeon deliberately refused to use anesthesia during the stitching up of the deadly wounds to his stomach and veins, commenting as follows: «*You were brave enough to cut yourself, now be brave enough to suffer*».⁷⁰



The statement by Yuriy Yatsenko about the use of torture against him



Scars on Yuriy Yatsenko's body, which resulted from forced self-mutilation

⁷⁰ Open Russia / «We will give you to Kadyrov, you will be his dog»: Ukrainian student speaks about a year in Russian captivity' – <https://openrussia.org/post/view/7683/>

| The court trial

During the investigation, the case of Yatsenko was reclassified from 'smuggling of goods' to 'possession of explosives', which is punishable by 4 years' imprisonment.

From the Kursk detention centre, he was transferred to the city of Belgorod, where at the beginning of March 2015, the court of first instance sentenced him to 2 years' imprisonment in a penal settlement. After Counsel Piotr Zaikin, previously involved in the defence of Mariya Alyokhina, a member of 'Pussy Riot', joined the case, an appeal was filed to the regional court of Belgorod. Having considered the appeal, the court decided to reduce the punishment to 9 months and release the prisoner who had already served the prison term.

At the first meeting, Piotr Zaikin emphasised the jurisprudence of the Supreme Court in the examination of similar cases, according to which, in such cases, citizens of the Russian Federation were not subjected to punishment in connection with the decriminalisation of the criminal article. This was the basis for the assertion that, in the case of the Ukrainian Yuriy Yatsenko, the sentence was politically motivated.⁷¹

All the above facts leave no doubt as to the complete innocence of the young people. However, a positive result was obtained not so much due to the observation of the rule of law, but rather thanks to bold actions of the accused and the professionalism of the defence. According to Yuriy Yatsenko, resistance to torture, denial of self-incrimination or cooperation with the investigative bodies made his detention absolutely useless for the purposes of propaganda and, thus, an unnecessarily financial burden. The story has not gained much publicity within Russia and, consequently, for the judiciary and law enforcement agencies it was not critical; which contributed to the decision to impose lenient sentences, mitigated also by the highly professional services provided by the defence.

This story serves to illustrate once again that the information war, being waged by Russia, does not discount even the most cruel methods and is able to create not only fictional television narratives, but also cause real suffering to innocent people.

⁷¹ Segodnya ['Today'] / The controversial trial of the Lviv student is underway in Russia – www.segodnya.ua/regions/lvov/Kak-v-Rossii-prohodit-skandalnyy-sud-nad-lvovskim-studentom.html

ESPIONAGE CASES – VALENTYN VYHIVSKYI, YURIY SOLOSHENKO, VIKTOR SHUR

7

Valentyn VYHIVSKYI

AGE:
33

small businessman,
participant of Euromaidan.



Photo from the family's personal archive

Photo from the family's personal archive



Yuriy SOLOSHENKO

AGE:
73

the former head of the
Poltava production
plant 'Znamya'.

Photo from the family's personal archive



Viktor SHUR

AGE:
58

owner of a
jewellery business,
collector

Since the beginning of the Russian-Ukrainian conflict, several Ukrainians in Russia at once have become victims of criminal prosecution on questionable charges of espionage.

The so-called 'espionage cases' of a citizen of the Russian Federation Viktor Shur, having a residence permit in Ukraine, and two citizens of Ukraine: Valentyn Vyhivskyi and Yuriy Soloshenko, have gained publicity. All three were secretly detained while travelling outside continental Ukraine and taken to the Lefortovo detention centre in Moscow (which, in fact, is the detention facility of the FSB). Their case is characterised by the same charges of 'spying for Ukraine'. In the initial stages of the prosecution, they were deprived of the right to an independent counsel and consular protection. According to the results of the investigation, all three pleaded guilty to all counts.

The analyses of these cases are greatly complicated by a lack of information, i.e. they all are classified as 'secret' and the case file is confidential even to close relatives. However, despite the fragmentation of data, there is reason to doubt the legality of the criminal prosecution.

| Yuriy Soloshenko

Yuriy Soloshenko is the oldest prisoner of all the currently known Ukrainians being persecuted for political reasons in Russia. In the detention centre, he turned 73. This was probably the reason why his prison term was 'only' 6 years in a strict regime colony, which is one year less than the minimum term for charges related to espionage.

For two decades, Yuriy worked in the military industry and headed the Poltava factory 'Znamya', which, following the collapse of the Soviet Union, existed solely thanks to orders from the Russian defence industry. In 2010, he retired, and the plant was closed. However, Yuriy continued to maintain contact with his former business partners. According to Yuriy's son, Aleksandr Soloshenko, his father was lured into the territory of the Russian Federation under false pretenses by his longtime partner Gennadiy Kollegov, who maintained contact with General of the Defence Ministry, Oleg Morozov.⁷²

In August 2014, Yuriy Soloshenko was detained at the Kyiv railway station in Moscow during a business trip. Yuriy's family members were not aware of his arrest until the moment they received a phone call from his counsel. They hurriedly began to seek a qualified independent counsel for Yuriy, but, according to them, one by one, the attorneys refused to take on the case due to the pressure exerted on them by the FSB; also, for 10 months, the Ukrainian consul was systematically denied permission to visit Yuriy. Relatives appealed to the Ukrainian Foreign Ministry, after which a note was sent to Russia with a request that that detainee, suffering from tachycardia and coronary heart disease, be provided with proper medical care. Soloshenko was permitted to make his first phone call home only 4 months after his arrest.

While still under investigation, insisting on his innocence, Yuriy Soloshenko wrote a letter to General Prosecutor Yuriy Chayka and a petition for clemency to the President of the Russian

⁷² Ukrainskaya Pravda ['The Ukrainian truth'] / Moscow decided that a Ukrainian man, ex-director of the 'Znamya' factory, will remain in jail until May – www.pravda.com.ua/rus/news/2015/02/6/7057715/

Я плохо представляю себе, как 73-летний человек с больным сердцем отправится на этап зимой в столыпинском вагоне, который увезет его неизвестно куда — из одной пересыльной тюрьмы в другую, да и вообще из вполне комфортных условий спецблока тюремной больницы в «Матросской тишине» — в неизвестно где расположенную колонию строгого режима.

Я, как могла, убеждала Юрия Даниловича, что он не должен бояться этапа, должен попробовать отнестись к нему как к «путешествию». Шутку он, конечно, понял, но сам не захотел даже пробовать шутить на эту тему. Несколько раз повторил: «Я умру на этапе!»

Прощались мы с ним чуть ли не со слезами. Раньше он надеялся на обмен, а сегодня сказал: «Меня Украина не обменяет, я ведь никакой не шпион. Я против России ничего не совершил».

An excerpt from the material of Russian human rights activist Zoya Svetova on the website 'Otkrytaya Rossiya' ['Open Russia'], published on 2 December, 2015

Federation, Vladimir Putin.⁷³ At the trial, Yuriy pleaded guilty. He stated that he was not going to appeal against the verdict. According to the Russian human rights activist Zoya Svetova, on 10 December, 2015, Yuriy Soloshenko was transferred to Nizhniy Novgorod in order to serve his sentence.⁷⁴

| Viktor Shur

On 9 December, 2014, while crossing the Russian-Ukrainian border in Bryansk Province, Viktor Shur was detained by the FSB. *De jure*, he is a citizen of the Russian Federation, despite the fact that he was born on the territory of the USSR and all of his relatives still live in Ukraine. Following the collapse of the USSR, he gave preference to Russian citizenship, as his professional activities required him to constantly travel to the territory of Russia. In recent years, he has lived in Chernigov. He supported Ukrainian volunteers and Euromaidan.⁷⁵

According to Viktor's son, Valeriy Shur, his father was officially arrested for insulting police officers and sentenced to 15 days' incarceration; later, he was accused of violating the rules of a sensitive facility, but, subsequently, the charges were reclassified to 'treason and collaboration with the secret services of a foreign state'.⁷⁶ (Art. 275 of the CC of the RF). The relatives learned of the whereabouts of Viktor at the end of December 2014.

According to the prosecution, Viktor Shur was sent to the Bryansk Province of Ukraine by intelligence services in order to gather information about a Russian military enterprise, which is, in fact, a deserted airport with silos for launching ballistic missiles and which was flooded back

⁷³ Ukrainskaya Pravda ['The Ukrainian Truth'] / In a Moscow detention centre, two more Ukrainians, accused of espionage, are held – www.pravda.com.ua/news/2015/01/23/7056066/

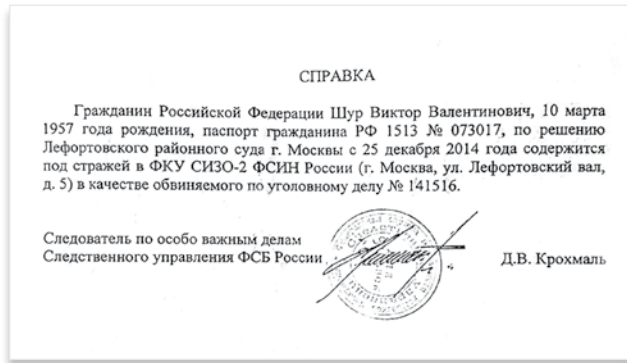
⁷⁴ Facebook / The page of Zoya Svetova – <https://www.facebook.com/zoiassetova/posts/1038834756182582?pnref=story>

⁷⁵ Insider / 5 unknown stories of Ukrainian political prisoners in Russia – www.theinsider.ua/politics/55cd9eb68f5a4/

⁷⁶ Bryansk Regional Court announced the judgement on the case of 'High treason' – www.oblsud.brj.sudrf.ru/modules.php?name=press_dep&op=1&did=334

in the 1980s.⁷⁷ Viktor's son claims that the FSB administered psychotropic substances to his father.⁷⁸

Viktor Shur pleaded guilty and on **7 October, 2015**, was sentenced to 12 years in a strict regime penal colony – the minimum possible time for the incriminated article ('high treason'). He is not going to file an appeal as he considers it useless. Viktor's relatives addressed the President, requesting that Viktor be granted Ukrainian citizenship with the hope of placing him on the 'list of prisoners of war subject to exchange'.⁷⁹



The first official report on the whereabouts of Viktor Shur, received by his family

| Valentyn Vyhivskiy

Valentyn Vyhivskiy graduated from the Kyiv Polytechnic University, had a private business, and participated in Euromaidan. On **17 September, 2014**, Valentyn went on personal business to Simferopol, where he was detained by the so-called 'Crimean Self-Defence forces' and transferred to the building of the former Main Directorate of the State Security Service of Ukraine of the Autonomous Republic of Crimea in Simferopol. He was subjected to torture there (stripped naked and beaten, with a bag placed over his head) and compelled to confess to espionage.⁸⁰ Later, he was transferred to the Lefortovo detention facility in Moscow. The investigating authorities of the FSB initially accused him of 'commercial espionage' (Article 183 of the CC of the RF), but later reclassified the case to 'espionage' (Art. 276 of the CC of the RF). The contents of the indictment act are classified.

For nearly 9 months, the Ukrainian consul was not permitted to visit Vyhivskiy. When the diplomatic representative finally received permission to visit the detainee, the meetings were held in the presence of the detention facility officers, which had previously exerted psychological pressure on the accused.⁸¹ A spokeswoman for the Moscow Public Oversight Commission Zoya Svetova was the first to be granted the opportunity to visit Vyhivskiy. According to her, he kept repeating: *"I'm all right. The investigation is underway"*. When asked about the change of counsel, he said: *"Why would I need a counsel? Here, in Russia, it is useless. I do not need a counsel."*⁸²

It was only after the verdict had been handed down that it became known that, according

⁷⁷ Otkrytaya Rossiya ['Open Russia'] / Isn't age an obstacle? 73-year-old 'Ukrainian spy' and pensioners – 'high traitors' <https://openrussia.org/post/view/10073/>

⁷⁸ Den ['The Day'] / Other captives of the Kremlin – www.day.kyiv.ua/ru/article/obshchestvo/drugie-plenniki-kremlya

⁷⁹ Gromadske radio / Anyone can become a spy – charges on which Ukrainians are convicted in Russia – www.hromadskeradio.org/2015/10/19/lyuboy-mozhet-stat-shpyonom-za-chto-sudyat-ukrayncev-v-rossyy

⁸⁰ Den ['The Day'] / Other captives of the Kremlin – www.day.kyiv.ua/ru/article/obshchestvo/drugie-plenniki-kremlya

⁸¹ Gromadske radio / Anyone can become a spy – charges on which Ukrainians are convicted in Russia – www.hromadskeradio.org/2015/10/19/lyuboy-mozhet-stat-shpyonom-za-chto-sudyat-ukrayncev-v-rossyy

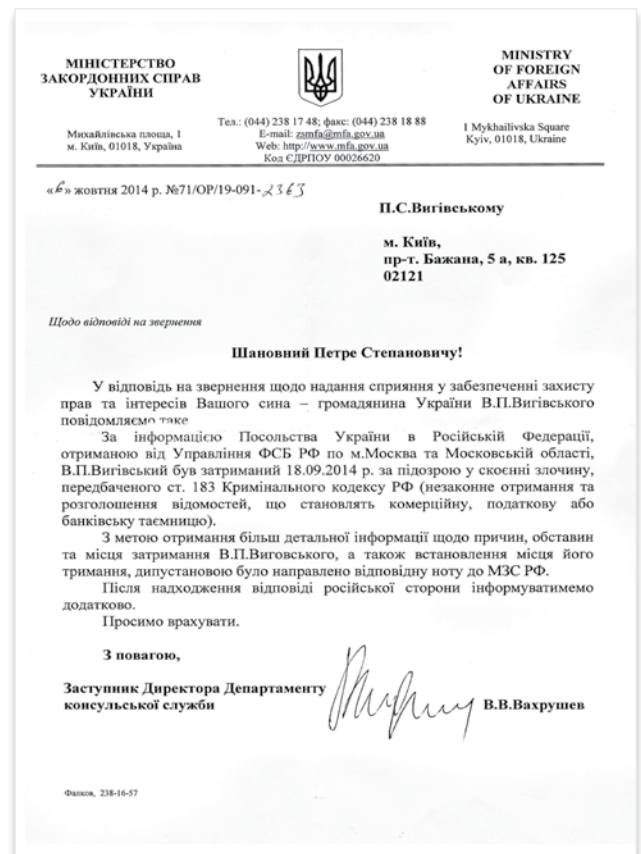
⁸² Ukrainskata Pravda ['The Ukrainian Truth'] / Russian human rights activist Zoya Svetova: On floor of the prison hospital was assigned for Savchenko – www.pravda.com.ua/rus/articles/2015/02/9/7057942/

to investigators, Vyhivskiy allegedly used the Internet to “recruit employees of the enterprises of the Russian aerospace military-industrial complex to collect and transfer to him, in exchange for money, secret technical documentation on the ongoing prospective developments”. On **15 December, 2015**, the Moscow Regional Court sentenced Valentyn Vyhivskiy to 11 years’ imprisonment in a strict regime penal colony, having convicted him of military and economic espionage in the Russian aerospace industry (Art.276 of the CC of the RF).⁸³ The defendant’s counsel announced her intention to appeal against the verdict on the grounds that the punishment is excessively severe.

| The facts which cast doubt on the charges

In the cases of Viktor Shur and Yuriy Soloshenko, there is a great number of unambiguous circumstances which cast doubt on the validity of the charges. As regards the case of Valentyn Vyhivskiy, there is practically no information available, and his family members are puzzled over what could have led to his criminal prosecution and the accusation of spying. It should be noted that the criminal prosecution of the Ukrainians was marred by the following irregularities:

- All three defendants were completely deprived of the right to legal and consular protection. Numerous attempts to hire independent lawyers, undertaken by their family members, were unsuccessful, as the detained, under obvious pressure from the intelligence services, declined the offer of defence, or the attorneys themselves subsequently denied the rendering of legal services. Consul General of Ukraine was permitted to visit Valentyn Vyhivskiy and Yuriy Soloshenko only after 8 and 10 months, respectively, after their arrest. Unfortunately, Viktor Shur was not eligible for this provision by virtue of his Russian citizenship.
- The information on the detention and whereabouts of the accused was kept secret even from close relatives for a long time. Information got to the press only after the formal extension of the detention, which in some cases was up to 6 months. The relatives were not informed about the whereabouts of their loved ones.
- During the visits, all prisoners showed extreme agitation. Shur and Vyhivskiy refused to comment on the details of the case. During the meeting with Ms. Svetova, Vyhivskiy even refused to indicate the number of the article under which he was accused. All three have pleaded guilty. It is highly probable that Ukrainians were intimidated with long prison terms, which is why they chose to cooperate with the investigative bodies.



A letter from the Ukrainian Ministry of Foreign Affairs sent to the family of V. Vyhivskiy confirming his arrest by the FSB forces

⁸³ Russian News Agency 'TASS' / Ukrainian citizen sentenced to 11 years for spying in the Russian aerospace field – www.tass.ru/proisshestviya/2528787

- According to Vyhivskiy's statements, brute force was applied during his arrest: he was stripped and beaten and a bag was placed over his head. According to Viktor Shur's son, psychotropic drugs were administered to his father.
- Photos of the 'military production plant', allegedly taken by Viktor Shur, were nothing more than images of an abandoned airfield, the operation of which had been suspended back in the era of the Soviet Union. The airstrip was destroyed and completely overgrown with grass. By itself, the object constitutes no military secret.
- The Poltava factory 'Znamya', headed by Yuriy Soloshenko until 2010, produced components for air defence systems 'Osa', 'Buk', 'Tor', 'Tunguska'. The Russian Defence Ministry placed orders with the company until 2010. It is likely that this information was not a secret to the competent authorities of Ukraine, on whose territory the plant is located.

Of course, all three cases are shrouded in mystery and cannot be clearly evaluated. Nevertheless, violations of the rules of investigation and inquiry, as well as ill-treatment of the suspects and the denial of consular and independent legal assistance cast doubt over the fairness of the criminal prosecution.

THE CASE OF ESTON KOHVER

8



Photo: RIA, FederalPress

Eston KOHVER

AGE:
44

an employee of the Estonian
Security Police 'KaPo'

| Abduction of Eston Kohver by Russian special services from the territory of Estonia

On 5 September, 2014, Estonian security police officer Eston Kohver was captured by Russian security services in the forest near the Luhamaa border crossing (Meremäe county, Estonia) and transferred to Russia, where he was later detained allegedly for espionage and illegally crossing the border. During the 'detention', Kohver's weapon and recording equipment were seized. As explained by the Estonian side, in the border zone, Kohver was fulfilling a special mission – he was investigating a smuggling racket involving a Russian organised criminal group. In the place of the alleged meeting with an undercover informant, Kohver was seized by workers of the Russian special services.

Immediately after Kohver's arrest, Russian and Estonian border guards produced a protocol for trespassing, which was signed by the border guards of the two countries. According to the protocol, trespassing occurred both on the Russian and the Estonian side. This fact proves that Kohver was abducted from the territory of Estonia as the document registered violations committed by Russians at the Estonian border. This was followed by a violation of the Russian border by Estonians as they made unsuccessful attempts to release Kohver.⁸⁴ The version of his abduction from the territory of Estonia is also supported by evidence of a struggle including marks which were consistent with him being dragged along the ground, as well as the explosion of stun grenades on the Estonian side of the border.⁸⁵

On **6 September, 2014**, the Lefortovo Court of Moscow sanctioned the arrest of Eston Kohver. During the 72 hours after his detention, no diplomats were permitted to see Eston Kohver, which contravenes bilateral agreements between Russia and Estonia.⁸⁶ It was only on **9 September, 2014**, that Eston Kohver first met with Estonian officials. Later, meetings were held twice a month in the presence of the FSB workers, who prohibited them from discussing the details of the criminal case with the defendant.

After his arrest, Kohver was held in the Lefortovo detention facility, known for its harsh conditions. In October 2014, Eston Kohver was appointed psychological and psychiatric examination, which has been regarded by Estonia and the international community as an attempt to exert psychological pressure on him.

| The demonstrative nature of the case – the link between the abduction of Eston Kohver and Barack Obama's visit to Estonia

On **3 September, 2014**, President of the United States, Barack Obama arrived in Estonia. During his visit, the President of the United States assured the authorities of the country of security guarantees from NATO in the case of Russian aggression. Eston Kohver was abducted 2 days after the statement was made.

⁸⁴ Radio Svoivoda / Do you know Eston Kohver? – www.svoivoda.org/content/article/27243795.html

⁸⁵ Novaya Gazeta ['The New Newspaper'] / Hostage-taking as part of a hybrid war – www.novayagazeta.ru/columns/69611.html

⁸⁶ U. S. Mission to OSCE Statement on Detention of Eston Kohver – www.estonia.usembassy.gov/sp_en091914.html

In this context, Eston Kohver's abduction from the territory of Estonia can be regarded as a deliberate action on the part of Russia, designed to contradict the statement made by the American president on security guarantees.

From the outset, the case of Eston Kohver received wide publicity, not only in the Western, but also the Russian media, which is uncharacteristic for 'espionage' cases. Against the backdrop of the growing confrontation between Russia and Western countries, the case of Kohver was perceived as an episode in the emergence of a new 'cold war'.

The global community has strongly supported Eston Kohver and condemned Russia's actions, which violated the sovereignty of Estonia. Calls for the immediate release of the Estonian were issued by the US State Department,⁸⁷ EU High Representative for the Common Foreign and Security Policy,⁸⁸ the European Parliament,⁸⁹ and OSCE.

The demonstrative nature of the case was also confirmed by the sentencing of Eston Kohver on the eve of Independence Day in Estonia.

| The court trial

In order to protect the interests of Eston Kohver, the Estonian government hired prominent Russian counsels: Mark Feigin and Nikolay Polozov, famous for their participation in high-profile politically motivated cases — the defenders of the punk band 'Pussy Riot' and Ukrainian political prisoner Nadiya Savchenko.

On **17 September, 2014**, it was reported that Eston Kohver, probably under pressure from investigative bodies, refused to use the services of the counsels, chosen by the Government of Estonia, showing a preference for Counsel Evgeniy Aksenov, provided by the Russian state.⁹⁰ According to counsel Mark Feigin, Eston Kohver made a deal with the investigative bodies and pleaded guilty. One of the conditions of the deal was Kohver's refusal to use the 'defenders', which he did, refusing the protection offered by the counsels, employed on his behalf by the Estonian Government.⁹¹

According to the Estonian side, Counsel Aksenov did not provide adequate legal assistance to Eston Kohver and became well-known for making a number of provocative statements, including such which undermined the reputation of the Estonian authorities. According to journalists, Evgeniy Aksenov may be a member of the FSB.⁹² From the very beginning, he accepted the line of the Russian side stating that Kohver had been detained on the territory of Russia, and he used the line as a basis when defending Kohver. This can be proven by Aksenov's own words,

⁸⁷ ERR.ee / US State Department Urges Russia to Release Kohver – www.news.err.ee/v/politics/d4d14ab4-9dd4-4798-b8c6-20900ce1b2e1

⁸⁸ Statement by the Spokesperson on the abduction of the Estonian police officer – www.eeas.europa.eu/archives/ashton/media/statements/docs/2014/140911_01_en.pdf

⁸⁹ Interfax / European Parliament demanded an independent international investigation into the murder of Nemtsov – www.interfax.ru/world/429400

⁹⁰ Grani.ru / Kohver refused to use the services of Counsels Feigin and Polozov – www.grani.ru/Politics/Russia/Politzeki/m.233093.html

⁹¹ Gazeta.ru / 15 years' in prison for the Estonian spy – www.gazeta.ru/social/2015/08/19/7695803.shtml

⁹² DELFI / Reporter: Evgeniy Aksenov, Kohver's counsel, is considered a designated attorney of the FSB – www.rus.delfi.ee/daily/estonia/zhurnalst-evgeniya-aksenova-advokata-kohvera-schitayut-dezhurnym-advokatom-fsb?id=69855249

uttered after the verdict was handed down: *“The arguments of the prosecution are very well documented, there are many of them, and there is practically no evidence offered by the defence. We were acting based on the materials that were in my possession, and those presented by the prosecution, that is, collected by the FSB. I tried to interpret them in favour of my client.”*⁹³

On **27 July, 2015**, in the Pskov Regional Court, the trial of Eston Kohver commenced. The trial was held behind closed doors. The trial was closed not only to journalists, but also to the Consul of Estonia. Details of the trial remain unknown due to the confidential nature of the case.

On **19 August, 2015**, on the eve of Independence Day of Estonia, the Pskov Regional Court sentenced Eston Kohver to 15 years’ imprisonment in a strict regime penal colony and imposed on him a fine of 100,000 rubles for espionage (Art. 276 of the CC of the RF), smuggling of arms (Art. 226.1, section 1 of the CC of the RF), illegal possession of weapons (Art. 222, section 1 of the CC of the RF), and illegal crossing of the border (Art. 322 of the CC of the RF). The state prosecution demanded that Kohver be sentenced to 16 years’ imprisonment and fined 200,000 rubles. Eston Kohver did not appeal against his sentencing.

According to Evgeniy Aksenov, in court, Eston Kohver pleaded not guilty to the charges.⁹⁴ However, the history of the case of Kohver (his refusal to use the services of independent counsels and the decision not to appeal against the sentence) casts doubt over the integrity of the statement, made by his counsel.

| An exchange

On **26 September, 2015**, at the ‘Kunichina Gora’ border crossing point between Russia and Estonia, on the bridge over the Piusa River, Eston Kohver was exchanged for a former officer of the Security Police Department of Estonia’s Ministry of Internal Affairs, Aleksey Dressen, who was serving time for passing classified data to the Russian FSB.

Legally, the exchange was made possible after Russian President Vladimir Putin granted Kohver’s petition for clemency and Estonian President Toomas Hendrik Ilves, on his part, pardoned Dressen.⁹⁵ The initiator of the exchange was the Estonian side.

The liberation of Eston Kohver, albeit done in exchange for a Russian spy, was the Kremlin’s attempt to compensate for the loss of image in the face of the international community. That is why the fact of the exchange received widespread media coverage, though, as a rule, such ‘deals’ are kept secret. The selection of Aleksey Dressen, who has never been a citizen of Russia, as a candidate for the exchange, could indicate that for the Kremlin, ‘rescuing’ a spy was not an important factor, but rather, it was an opportunity to show Western countries the price of resolving such matters. At the same time, Russia has, in fact, abandoned its soldiers, involved in the conflict in eastern Ukraine.

⁹³ Kohver’s counsels: evidence of the defence was submitted with the Federal Security Service – www.rus.postimees.ee/3298809/advokat-kohvera-dokazatelstva-zawity-byli-predstavleny-fsb

⁹⁴ Postimees / Photos and videos from Pskov: Eston Kohver was sentenced to 15 years in prison – www.rus.postimees.ee/3298627/foto-i-video-iz-pskova-jeston-kohver-prigovoren-k-15-godam-lishenija-svobody

⁹⁵ Mediazona / The Estonian man, Eston Kohver, convicted of spying, was exchanged for ex-worker of the MIA of Estonia, Dressen – www.zona.media/news/pomeniali-kohvera/

CONCLUSIONS AND RECOMMENDATIONS

9

The modern authoritarian regime in Russia is indifferent to the fate of individuals, on whom it is not averse to stepping on in order to implement its foreign and domestic policy goals. Approx. 30 Ukrainians have become hostages of Putin's regime. These prosecutions have obvious political overtones. Individuals are being pursued in order to prevent them from engaging in public non-violent activities in protest against the occupation of Crimea and in support of the protection of human rights, or they are used as a tool for Russian propaganda purposes, aimed at portraying Ukraine as an 'external enemy'; consequently, Ukrainians are labelled 'castigators', 'terrorists', 'criminals' and 'spies'. With the use of methods that are unacceptable for any state of law, they were accused of crimes they had not committed, and were illegally imprisoned. Some of the Ukrainians have already been sentenced to long prison terms, and the rest are under no illusions regarding the sentences which will be imposed upon them.

The unlawfulness of prosecutions is evidenced by multiple violations, characteristic for almost all of the so-called 'Ukrainian cases':

- Unclear circumstances of detention or, as was in the case of Nadiya Savchenko, abduction from the territory of Ukraine.
- Refusal to provide legal and diplomatic protection: the detainees were provided a public attorney who actually worked in the interests of the prosecution and did not provide good-quality legal aid.
- Isolation of detainees from contact with their family and relatives, due to which the latter had no information about the whereabouts of the detainees or the course of the criminal prosecution. For several months, Mykola Karpyuk's family members did not even know if he was alive.
- Classifying criminal cases in order to conceal the existing violations of the proceedings. For the same reason, lawyers were recommended by investigative bodies, under threat of criminal responsibility, to sign a statement on non-disclosure of the case file.
- The use of physical and psychological violence in order to compel the detainees to slander themselves and to confess to the crimes. As a result, many could not stand the pressure and made deals with the investigative bodies.
- Charges are not supported by sufficient evidence bases and, in most cases, are based on flimsy testimonies of witnesses. In some cases, torture was also exerted on witnesses.
- Disparity of the charges and the alleged crimes.
- Unjustified declaration and a spontaneous decision by the Russian authorities to 'extend the jurisdiction' on crimes, committed outside the Russian state and against non-Russian citizens. This contradicts not only common sense, but the international agreements and laws of the Russian Federation, and also creates a dangerous precedent, as any crime committed on the territory of Ukraine or another state may 'be investigated in Russia'.

The cases, described in this report, show that currently, not one Ukrainian citizen who resides on the territory of Russia is protected against an unjustified detention and further criminal prosecution on trumped-up charges.

The case of Eston Kohver proves that European countries are also not protected against the kidnapping of their citizens by Russia. A new era of the 'cold war' between Russia and the West is accompanied by a demonstrative violation of the sovereignty of European countries (such as repeated violations of sea and air space of NATO countries by Russian soldiers⁹⁶). The abduction and criminal prosecution of citizens of another state also constitutes a threat to the sovereignty of the state. There is no guarantee that such incidents will not be repeated in the future.

At a time when the judicial and law enforcement system enforces the state order, the outcome of each of the so-called 'Ukrainian cases' is known in advance. Obviously, the question of the release of the imprisoned Ukrainians is not a legal one, but rather political and diplomatic. The case of Eston Kohver indicates that international pressure can be effective in the release of political prisoners in Russia.

Within the framework of the advocacy campaign 'LetMyPeopleGo', the Open Dialog Foundation and the Civic Initiative 'Euromaidan SOS' hereby calls on the international community (international organisations and institutions, governments of the EU Member States, the governments of Australia, Canada, the USA and Japan) to increase pressure on the Russian authorities in order to bring about the release of Ukrainians, incarcerated for political reasons. In order to achieve this, we consider it necessary to:

1. Organise an international campaign for the defence of the Ukrainian citizens, faced with unlawful, politically motivated criminal prosecution in Russia and occupied Crimea. In particular, it is necessary to organise hearings on the topic in the national parliaments of democratic states and the European Parliament.
2. Create a foundation for emergency aid for Ukrainians and their families, persecuted for political reasons in Russia and occupied Crimea.
3. Demand that the Russian side respect the basic rights of citizens of Ukraine and the European Union, included in the list of the campaign 'LetMyPeopleGo', such as the right to life, freedom from torture, the right to a fair trial; ensure access to a counsel, the international medical missions, as well as Ukrainian and European diplomatic representatives within the period established in international obligations of the Russian Federation.
4. Promote the provision of qualified legal assistance for Ukrainians, persecuted for political reasons in Russia and occupied Crimea; provide protection and international support for lawyers who run criminal cases within the framework of the 'LetMyPeopleGo' campaign.
5. Organise international observation of the trials of the citizens of Ukraine, imprisoned in Russia and occupied Crimea for political reasons.
6. Organise monitoring missions to places of detention of Ukrainian citizens, imprisoned for political reasons in Russia and occupied Crimea. It is necessary to establish control over the conditions of their detention and their states of health.

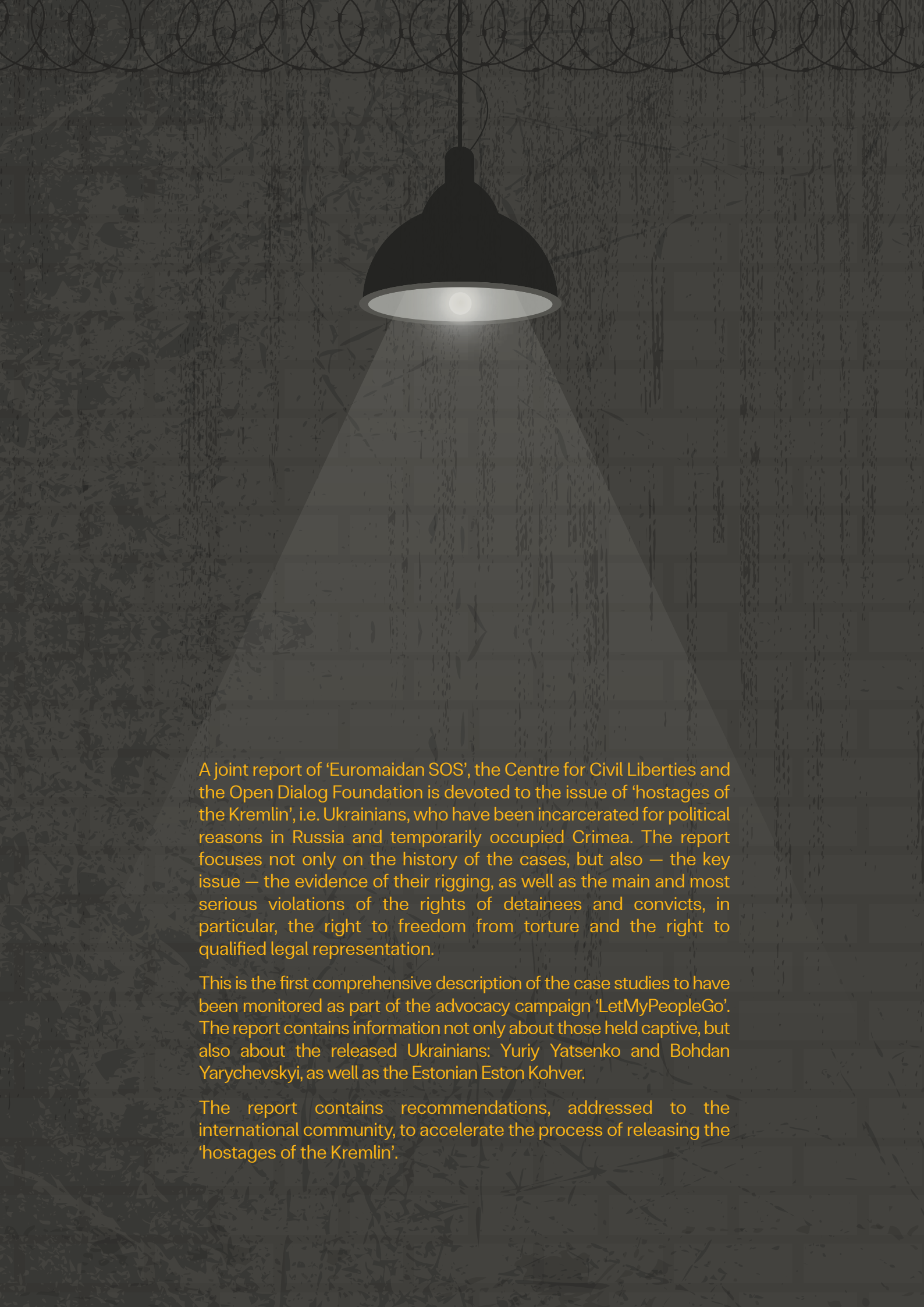
⁹⁶ Ukrainskaya Pravda ['The Ukrainian Truth'] / NATO will summon a meeting urgently due to the issue of Russian aircraft in Turkey – www.pravda.com.ua/news/2015/10/5/7083738/

7. Consider the possibility of nominating the Ukrainians, persecuted for political reasons, as candidates for various prizes and awards in order to attract the maximum publicity to their cases, as well as financial and moral support for the persecuted and their families.
8. Introduce personal sanctions against those involved in the illegal, politically motivated criminal prosecution of Ukrainians in Russia and occupied Crimea.
9. Demand from the Russian side that Ukrainian citizens, imprisoned in Russia and occupied Crimea for political reasons, be unconditionally released. Without meeting this requirement, the Minsk Agreements cannot be considered to have been fulfilled, and the regime of sanctions, imposed on Russia by democratic countries of the world should remain in force until all Ukrainians, incarcerated for political reasons in Russia and occupied Crimea, are released.

All those wishing to support our demands are welcome to send their statements to the following persons and institutions:

- PACE President **Anne Brasseur** – e-mail: abrassuer@chd.lu, tel: +33 88 41 23 41;
- OSCE PA Presidente **Ilkka Kanerva** – e-mail: ilkka.kanerva@parliament.fi, tel: +358 9 432 3055; +358 9 432 3529;
- OSCE PA Chair of the Committee on Democracy, Human Rights and Humanitarian Questions **Isabel Santos** – a form for online requests: <https://www.parlamento.pt/DeputadoGP/Paginas/EmailDeputado.aspx?BID=2103>, tel: +351 21 391 9628;
- European Parliament President **Martin Schulz** – 1047 Brussels, Belgium, Bât. Paul-Henri Spaak 09B011, Rue Wiertz / Wiertzstraat 60, e-mail: martin.schulz@europarl.europa.eu, tel: +32(0)2 28 45503 (*Brussels*), +33(0)3 88 1 75503 (*Strasbourg*);
- EU High Representative for Foreign Affairs and Security Policy **Federica Mogherini** – 1049 Brussels, Rue de la Loi / Wetstraat 200, e-mail: federica.mogherini@ec.europa.eu, tel: +32 2 584 11 11; +32 (0) 2 295 71 69;
- The Head of the European Parliament Committee on Foreign Affairs **Elmar Brok** – 1047 Brussels, Belgium, Bât. Altiero Spinelli 05E240, Rue Wiertz / Wiertzstraat 60, e-mail: elmar.brok@europarl.europa.eu, tel: +32(0)2 28 45323 (*Brussels*), +33(0)3 88 1 75323 (*Strasbourg*);
- The Head of the European Parliament Subcommittee on Human Rights **Elena Valenciano** – 1047 Brussels, Belgium, Bât. Altiero Spinelli 11G354, Rue Wiertz / Wiertzstraat 60, e-mail: elena.valenciano@europarl.europa.eu, tel: +32(0)2 28 45846 (*Brussels*), +33(0)3 88 1 75846 (*Strasbourg*);
- The Head of Delegation to the EU-Ukraine Parliamentary Association Committee **Andrej Plenković** – 1047 Brussels, Belgium, Bât. Altiero Spinelli 14E165, Rue Wiertz / Wiertzstraat 60, e-mail: andrej.plenkovic@europarl.europa.eu, 1047 Brussels, tel: +32(0)2 28 45955 (*Brussels*), +33(0)3 88 1 75955 (*Strasbourg*);

- EU Special Representative (EUSR) for Human Rights **Stavros Lambrinidis** – e-mail: stavros.lambrinidis@ext.eeas.europa.eu, tel: +32(0)2 584 230;
- The President of the European Council **Donald Tusk** – 1048 Brussels, Rue de la Loi / Wetstraat 175, e-mail: donald.tusk@european-council.europa.eu, tel: +32 2 28 15650;
- The President of the European Commission **Jean-Claude Juncker** – 1049 Brussels, Belgium Rue de la Loi / Wetstraat 200, e-mail: president.juncker@ec.europa.eu;
- The Secretary General of the Council of Europe **Thorbjørn Jagland** – e-mail: thorbjorn.jagland@coe.int, tel: + 33 (0)3 88 41 20 00;
- United Nations High Commissioner for Human Rights **Ra'ad Zeid Al-Hussein** – Palais des Nations, CH-1211 Geneva 10, Switzerland, tel: +41 22 917 9220;
- NATO PA President **Michael Turner** – 1000 Brussels, Belgium, 3 Place du Petit Sablon, a form for online requests: www.nato-pa.int/Default.asp?SHORTCUT=2098, tel: +32(0)2 513 28 65;
- US Secretary of State **John Kerry** – a form for online requests: <https://register.state.gov/contactus/contactusform>;
- Chairman of the US Helsinki Commission Senator **Chris Smith** – 20515, Washington, D.C., USA, 2373 Rayburn House Office Building, tel: +1 (202) 225 37 65;
- Office of the Prime Minister of Canada **Justin Trudeau** – ON K1A 0A2, Ottawa, 80 Wellington Street.



A joint report of 'Euromaidan SOS', the Centre for Civil Liberties and the Open Dialog Foundation is devoted to the issue of 'hostages of the Kremlin', i.e. Ukrainians, who have been incarcerated for political reasons in Russia and temporarily occupied Crimea. The report focuses not only on the history of the cases, but also – the key issue – the evidence of their rigging, as well as the main and most serious violations of the rights of detainees and convicts, in particular, the right to freedom from torture and the right to qualified legal representation.

This is the first comprehensive description of the case studies to have been monitored as part of the advocacy campaign 'LetMyPeopleGo'. The report contains information not only about those held captive, but also about the released Ukrainians: Yuriy Yatsenko and Bohdan Yarychevskyi, as well as the Estonian Eston Kohver.

The report contains recommendations, addressed to the international community, to accelerate the process of releasing the 'hostages of the Kremlin'.