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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fifth session, 18-27 April 2016

#### **Opinion No. 5/2016 concerning Arsen Klinchaev, Alexander Kharotonov, Anton Davidenko, Mikhail Chumachenko, Dmitry Kouzmenko, Leonid Baranov, Konstantin Dolgov, Ignat Kramskoy, Pavel Yurevich Gubarev and others (Ukraine)\***

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

2. In accordance with its methods of work (A/HRC/30/69), on 13 June 2014 the Working Group transmitted a communication to the Government of Ukraine concerning Arsen Klinchaev, Alexander Kharotonov, Anton Davidenko, Mikhail Chumachenko, Dmitry Kouzmenko, Leonid Baranov, Konstantin Dolgov and Ignat Kramskoy. The Government replied to the communication on 14 August 2014. The State is a party to the International Covenant on Civil and Political Rights.

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

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

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

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



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

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

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

## **Submissions**

### *Communication from the source*

4. The source first introduced an application alleging the arbitrary arrest and detention of nine individuals as detailed in the following paragraphs.

5. Mr. Klinchayev, Deputy of the Lugansk Regional Council and head of the local public organization “Molodaya Gvardia”, was arrested on 10 March 2014 by Security Service officials in Lugansk and transferred to Kyiv.

6. Mr. Kharotonov, People’s Governor of Lugansk, was arrested on 13 March 2014 in Lugansk and conveyed to Kyiv.

7. Mr. Davidenko, political leader in Odessa and head of the public movement “Narodnaya Alternative”, was arrested on 18 March 2014 by Security Service officials in Odessa and sent to Kyiv.

8. Mr. Chumachenko, one of the leaders of the Donbass movement and head of the public movement “Narodnoye Opolchenie Donbassa”, was arrested on 22 March 2014 in Donetsk by Security Service officials and transferred to Kyiv.

9. Mr. Kouzmenko, People’s Mayor of Mariupol in Donetsk region, was arrested on 5 April 2014 in Mariupol by Security Service officials. Since then, his whereabouts are unknown.

10. Mr. Baranov, one of the coordinators of the so-called “Donetsk People’s Republic”, was arrested on 18 April 2014 by Security Service officials, who forced him into a jeep. Since then, his whereabouts are unknown.

11. Mr. Dolgov, a journalist from Kharkov, one of the coordinators of the so-called “Movement for the Federalization of Ukraine”, was arrested on 19 April 2014 in Kharkov by Security Service officials. According to the source, he was charged with arson and sentenced to 60 days’ imprisonment.

12. Mr. Kramskoy, a political activist, was arrested on 26 April 2014 in Kharkov by Security Service officials.

13. The source further reports that some other 64 unnamed persons who participated in a meeting in Kharkov in support of federalization were detained during the night of 7 and 8 April 2014. Among those detained, 43 individuals were sentenced to 60 days’ imprisonment and transported to Poltava to serve their sentences in a local pretrial prison.

14. Finally, the source mentions that Mr. Gubarev, People’s Governor of Donetsk, born on 10 February 1983 in Sievierodonetsk, was arrested on 6 March 2014 in Donetsk by Security Service officials and accused of advocating separatism. It is reported that he was

sent to Kyiv. In a letter received on 20 May 2014, the source stated that he was released on 7 May 2014.

15. According to the source, these persons have been arrested and are being kept in detention for having exercised their civil and political rights. They were peacefully demonstrating, while exercising their rights to freedom of opinion and expression and peaceful assembly.

16. The source adds that the Ukrainian authorities must uphold the right of everyone to protest peacefully. All Ukrainian law enforcement and military officers engaged in operations to restore security in eastern Ukraine must adhere to international human rights standards.

17. In the source's view, the detention of these persons represents a clear violation of their rights to liberty and security, and as such is in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and of articles 9 and 19 of the International Covenant on Civil and Political Rights. Consequently, the source considers their deprivation of liberty to be arbitrary.

#### *Response from the Government*

18. The Working Group sent a communication to the Government of Ukraine on 13 June 2014. On 5 August 2014, the Government sought to extend the deadline to file its response, which was later submitted on 14 August 2014. On 29 September 2014, the Government filed an additional response, which provided more detailed information about each of the persons mentioned by the source.

19. In its follow-up response, the Government of Ukraine asserted the following:

(a) Mr. Klinchaev was arrested and detained while awaiting trial. A court later ordered him to be placed under house arrest;

(b) Messrs. Kharotonov and Davidenko were arrested and detained. They were later convicted and sentenced to five years' imprisonment, but released on probation;

(c) Messrs. Chumachenko, Baranov, Dolgov and Gubarev were arrested and detained while awaiting trial. However, they all escaped from detention;

(d) Messrs. Kouzmenko and Kramskoy were arrested and detained while awaiting trial.

20. Finally, the Government of Ukraine stated that 66 other individuals were arrested on 8 April 2014. Although the source did not identify those individuals, the Government of Ukraine provided a detailed list. Some of them were placed under house arrest or granted bail while awaiting trial, while others fled. The Government identified them all.

21. The Government of Ukraine did not comment on the alleged arbitrariness of their detention.

#### *Further comments from the source*

22. On 29 August 2014, the source sent a letter, which offered no substantive comments, in reply to the response of the Government. On 11 May 2015, the follow-up response from the Government was shared with the source, together with a letter inviting the latter to comment on the response. On 11 December 2015, the source responded for a second time but, once again, offered no substantive comments.

#### **Discussion**

23. Pursuant to paragraph 5 of the methods of work, one of the experts withdrew from consideration of the case.

24. The Working Group observes that all submissions from the source were in Russian and required professional in-house translation. The delay in translating these documents impaired the capacity of the Working Group to assess the case.

25. The Working Group further observes that the information provided by the source and the respondent State is not contradictory. While the source drew attention to the arrests and assumed their unlawful nature without providing the necessary information in this respect, the respondent State provided the necessary details, allowing the Working Group to identify the individuals concerned and to understand how the law enforcement agents and the court system managed the cases. Conclusions are therefore easy to draw.

26. In the case of the nine individuals identified by the source, it appears that they were indeed arrested on suspicion of criminal activities and within a day or two appeared before a judge in order to confirm their detention. One of them was then placed under house arrest and two were detained in order to await trial. Two others have already been convicted and sentenced to five years in prison, but released on probation. The last four escaped from a detention centre and are now on a list of wanted persons. The risk of arbitrary detention concerns only those individuals in either pretrial detention or under house arrest at the time of the submissions. However, neither of the parties has offered sufficient information for the Working Group to draw any conclusion on whether their pretrial detention has been longer than that allowed by the relevant regulations.

27. Among the 66 other individuals, 30 are in pretrial detention<sup>1</sup> and 23 under house arrest,<sup>2</sup> 11 have been released on bail<sup>3</sup> and 1 has escaped from detention.<sup>4</sup> Again, only those in pretrial detention, under house arrest or on bail are at risk of arbitrary detention. However, the lack of information does not allow the Working Group to draw any conclusions at this stage as regards the allegations of violations.

#### **Disposition**

28. In the light of the preceding, the Working Group does not, at this stage, consider that the detentions have been arbitrary, although it does not possess enough information to draw any definite conclusions. Therefore, and in accordance with paragraph 17 (a) of its methods of work, the Working Group decides to file the case.

*[Adopted on 19 April 2016]*

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<sup>1</sup> Namely, the following individuals: S.O. Yevreionov, A.O. Mamonov, A.O. Ladnyuk, V.M. Nesterov, K.K. Mamrosenko, M.D. Mazur, O.O. Lozovyy, M.A. Loboda, D.O. Levchenko, V.I. Kalugin, R.O. Ydenko, S.P. Cherepovskyy, V.A. Frolov, V.I. Usov, O.V. Soloviyenko, O.A. Rader, D.V. Pigorev, O.V. Olitto, A.F. Oleksenko, O.O. Oliynyk, D.V. Balagur, S.O. Golovachov, O.M. Kushnir, Y.V. Karpikov, O.A. Krutov, S.V. Zhuravlyov, S.O. Kovalchenko, O.Y. Bigunenko, S.V. Polichuk and S.O. Yudaev.

<sup>2</sup> Namely, the following individuals: A.A. Ripka, I.I. Pedorchenko, O.Y. Shumilov, R.V. Kolesnyk, A.V. Popov, O.S. Belichenko, O.O. Myagkov, O.A. Galkin, Y.V. Grychenko, B.Y. Krylov, O.O. Nikolienko, V.V. Gubich, V.O. Verkhoshapov, A.I. Zhyravel, V.Y. Puh, S.E. Gaponov, I.O. Dubovik, R.V. Kolesnik, P.S. Melnychuk, G.Y. Gorbunov, V.V. Yanchuk, V.V. Loginov and M.V. Oksachenko.

<sup>3</sup> Namely, the following individuals: I.I. Dzhadan, S.A. Vinogradov, O.O. Mazyrenko, V.M. Balagura, Y.D. Pritchyna, V.V. Momot, S.M. Ganin, Y.O. Lelyuk, O.I. Telnov, O.O. Mazurenko and Y.Y. Klymakhin.

<sup>4</sup> Namely, V.V. Scherbyna.