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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. 14/2016 concerning Alexandr Klykov (Russian Federation)¹

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

2. In accordance with its methods of work (A/HRC/30/69), on 12 June 2015 the Working Group transmitted a communication to the Government of the Russian Federation concerning Alexandr Klykov. The Government replied to the communication on 11 August 2015. The State is a party to the International Covenant on Civil and Political Rights.

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

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his 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);

* Reissued for technical reasons on 9 September 2016.

¹ In accordance with rule 5 of the methods of work, Vladimir Tochilovsky did not participate in the discussion of the 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 on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation or disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Alexandr Klykov, born on 9 August 1973, is a national of the Russian Federation, residing in Stanitsa Ladozhskaya, Krasnodar region. Prior to his arrest, Mr. Klykov worked as a driver at the MBUZ Central District Hospital of the Ust-Labinskyi district, in the Krasnodar region of the Russian Federation.

5. On 13 August 2014, at approximately 7 or 7.30 p.m., Mr. Klykov was arrested by two police officers at his home address. One of the police officers identified himself as Yuriy Shlykov. The second police officer did not immediately identify himself; subsequently, Mr. Klykov learned that his name was Dmitriy Kharchenko. At the time of his arrest, the police did not present Mr. Klykov with an arrest warrant. The police officers informed Mr. Klykov that they had been searching for him for two days on suspicion that he had committed a burglary. The police officers took Mr. Klykov to the police station of the Ust-Labinskyi district, where he was fingerprinted and photographed without his consent.

6. Later on that evening, Mr. Shlykov informed Mr. Klykov that he had passed the identification procedure and was not recognized by the witness as a perpetrator of the burglary. Nevertheless, Mr. Shlykov placed Mr. Klykov in a police temporary detention cell for one night, without giving any reasons or explanations.

7. In the morning of 14 August 2014, Mr. Klykov was taken by two police officers to the magistrate's court of the Ust-Labinskyi district. One of the police officers identified himself as Denis Litvinov. Following a short trial, the court found Mr. Klykov guilty of violating section 20.21 of the Code of Administrative Offences by appearing drunk in a public place, the intersection of Lenin and Obodskyi Streets in Ust-Labinsk town, at 8.50 p.m. on 13 August, and disturbing the public peace and order. Mr. Klykov was sentenced to 15 days of administrative detention and placed in a cell in the special incarceration centre for administrative offenders.

8. The source asserts that the trial and the ruling by the magistrate's court was arbitrary and manifestly unfair, as at the time in question Mr. Klykov was being arrested at his house. The hearing was conducted in the absence of Mr. Klykov's lawyer. From the moment of arrest until the trial at the magistrate's court, Mr. Klykov was held in custody at the police station.

9. On 14 August 2014, at 1 p.m., Mr. Klykov was taken from his cell to the police station by the same two police officers who had arrested him the day before, Mr. Shlykov and Mr. Harchenko. At the police station, Mr. Klykov was informed that he was suspected

of having murdered Yuriy Shevelev, who was killed while guarding the storehouse at prison colony No. 3 at approximately 3.30 a.m. on 11 August.

10. Reportedly, Mr. Shlykov had administered a polygraph test to Mr. Klykov without his consent or the presence of his lawyer. The results of the test were not conveyed to Mr. Klykov. Later the same day, Mr. Shlykov took Mr. Klykov to the head of the operational department of the police in Ust-Labinskyi district, who threatened him and his family with very serious consequences if he did not confess to the murder of Mr. Shevelev. Mr. Klykov denied the accusation and pleaded not guilty. He was then returned to his cell at the special incarceration centre for administrative offenders.

11. On 15 August 2014, at 9 a.m., Mr. Shlykov and another police officer took Mr. Klykov from his cell to the Ust-Labinskyi district police station, where they interviewed him in the absence of his lawyer. The police officers informed Mr. Klykov that they knew about a loan of Rub 240,000 (approximately US\$ 6,500) to the deceased Mr. Shevelev's mother, the repayment of which was overdue, hence providing a strong motive for Mr. Klykov to kill Mr. Shevelev. During the interview, which lasted for four hours, Mr. Klykov insisted that he was not guilty and denied all accusations.

12. On the same day, at 1.15 p.m., five police officers — Mr. Shlykov, Mr. Litvinov, Mr. Kharchenko, Dmitriy Kvitko and Sergey Kostin — began to curse, swear and beat Mr. Klykov. Mr. Shlykov hit Mr. Klykov first, punching his forehead. Then another police officer punched Mr. Klykov in the area of the left side of his mouth, splitting his lip, which began to bleed. The police officers shouted at Mr. Klykov, saying that the polygraph test had shown that he was involved in Mr. Shevelev's murder, and that he should confess and write out his confession. When Mr. Klykov asked to be shown the test results, Mr. Kostin smothered him with his hands and banged the back of his head against the wall several times. Then all five police officers threatened Mr. Klykov with torture, in particular by inserting a Taser in his anus and/or taking him outside the town and "destroying his health". The police officers also threatened to arrest Mr. Klykov's partner, mother and brother for concealing his crime and to place his children in social care. Mr. Klykov sustained a powerful blow to his chest, which knocked him to his knees. He also sustained a blow with a hard object to his coccyx, which caused severe, long-lasting pain. After Mr. Shlykov hit him eight times on his head and body with a plastic bottle filled with water, Mr. Klykov was taken back to his cell, where his condition after the torture was witnessed by a cellmate.

13. On the same day, at 4 p.m., Mr. Klykov was taken from his cell to the Ust-Labinskyi district police station interrogation room, where he was left alone with two unknown persons in plain clothes who introduced themselves as "serious people" from Krasnodar city. They said that he had to confess, or he and his relatives would suffer consequences. Mr. Klykov perceived those threats to be real and, thus, was forced to write a "voluntary self-incriminating statement".

14. After the two men from Krasnodar left the interrogation room, Mr. Shlykov and Mr. Kostin gave him a blank "voluntary self-incriminating statement" form on which to write his confession of murder. Mr. Kostin dictated the text, which Mr. Klykov had to write with his own hand and sign.

15. At 7 p.m. on the same day, Mr. Sheriev, an investigator, formally interviewed Mr. Klykov as a suspect. Mr. Klykov repeated to the investigator the same story he had written down earlier. After the interview, Mr. Klykov was formally charged with murder under section 105 of the Penal Code of the Russian Federation and interviewed formally again by the same investigator, but this time as a formally accused person, a new procedural status. After two interviews in the late evening of the same day, the investigator took Mr. Klykov to the crime scene for verification of his statement. Reportedly, Mr. Klykov

showed how he had purportedly committed the murder of Mr. Shevelev. The source reports that all the statement made were directed and dictated by two police officers, Mr. Shlykov and Mr. Harchenko, who allegedly forced Mr. Klykov to confess by means of torture and other ill-treatment. They were also present during the verification of Mr. Klykov's confession at the crime scene.

16. The source submits that all the interviews and procedural actions that were conducted from 7 p.m. until late in the night of 15 August 2014 took place in the presence of a State-appointed lawyer, who reportedly did not provide effective legal assistance. During this crucial period, Mr. Klykov was not allowed to have a lawyer of his own choice, despite the fact that his relatives had already hired a lawyer. Because of the presence of the alleged perpetrators of torture and ill-treatment, Mr. Klykov was afraid to inform the investigator that he had been forced to confess. For his part, Mr. Sheriev did not make any inquiries into Mr. Klykov's visible injuries and appeared to have acted in complicity with the perpetrators of the torture and ill-treatment inflicted in the evening of 15 August. At a later stage of the investigation, Mr. Sheriev was replaced by another investigator.

17. On 16 August 2014, Mr. Klykov's lawyer, who had been hired by his relatives the day before, was allowed to meet his client. On the same day, after having interviewed his client and learned that he had been suffering pain in the coccyx and that he had been forced to confess under torture and ill-treatment by the police officers, the defence lawyer petitioned to the chief of department of the Ust-Labinskyi district police station to initiate a disciplinary and criminal investigation into kidnapping and the use of torture and ill-treatment. Reportedly, a close colleague of Mr. Sheriev was assigned as an investigator to conduct the preliminary inquiry on the defence lawyer's petition.

18. The source reports that although there was a clear conflict of interest, the investigator did not recuse himself from investigating the allegations of torture and ill-treatment. He delayed all requests from Mr. Klykov's lawyer to undertake a medical examination and to identify and interview the alleged perpetrators. Mr. Klykov was taken for a medical examination only on 18 August 2014, when most of the traces of physical abuse had disappeared. As to the pain in Mr. Klykov's coccyx, the medical officers reported that the X-ray did not reveal any bone fracture. The investigator also failed to interview Mr. Klykov's cellmate, who had witnessed his injuries when he was returned to his cell.

19. Reportedly, in the absence of due diligence and a timely and effective investigation of the allegations of torture committed by the police, the petition to initiate a criminal investigation into the kidnapping and torture of Mr. Klykov by police officers was rejected for the first time on 18 September 2014. Following a number of petitions by the defence lawyer to the same chief of the department of the Ust-Labinskyi district police station, the decision of the investigator not to initiate a criminal case was cancelled. However, two months later, the same investigator again denied the request to initiate a criminal investigation. Subsequently, the investigator was replaced by another colleague of Mr. Sheriev who, instead of conducting an effective investigation on the basis of numerous petitions from the defence lawyer, issued decisions on 26 December 2014, 16 March 2015 and 9 May 2015 refusing to investigate the allegations of torture and ill-treatment.

20. The source reports that on 17 August 2014, Mr. Klykov was placed in pretrial detention for two months. Reportedly, in deciding on pretrial detention the judge ignored Mr. Klykov's and his lawyer's complaints that his confession had been extracted under torture and ill-treatment.

21. Mr. Klykov's pretrial detention was subsequently extended twice, the last time on 10 December 2014, until 15 February 2015. During the detention period, or at least during

the period of the last extension, the investigator reportedly took no procedural actions to investigate the criminal case.

22. The investigation was completed on 11 January 2015 and the indictment delivered on 20 January. On 3 February, the Ust-Labinskyi district court agreed to consider the case and extended Mr. Klykov's detention pending completion of trial until 26 May. The trial started on 27 April and was completed on 21 May. Mr. Klykov was found guilty of murder and sentenced to eight years and one month of imprisonment. On 29 May, the defence appealed against the judgment to the Appellate Instance on Criminal Cases of the Krasnadarkyi Regional Court.

23. During the trial, the judge dismissed all defence petitions related to the admissibility of Mr. Klykov's confession of 15 August 2014 and all records of his interviews collected by the investigation on that date. According to the source, there was no material evidence which could have linked Mr. Klykov with the murder. Furthermore, the judge dismissed all petitions by the defence concerning admissibility of the hearsay statements of the police officers who had allegedly tortured Mr. Klykov. Those statements, as well as Mr. Klykov's confession, were used by the court to convict Mr. Klykov.

24. Furthermore, the judge dismissed the defence petition to declare the hearsay statements of two anonymous witnesses, who were purportedly serving their sentences for administrative offences in the same cell of the special incarceration centre for administrative offenders in which Mr. Klykov was put on 14 August 2014 to serve his administrative punishment of 15 days of imprisonment. Reportedly, the testimony of those two witnesses had been fabricated and lacked credibility. The source argues that they were given the status of "protected witnesses" so that they would support the claim by the police that Mr. Klykov had not been forced to confess. Apparently, evidence incriminating Mr. Klykov in the murder was in fact limited to evidence collected with a view to proving that he had voluntarily confessed to the crime.

25. The judge also dismissed all petitions from the defence concerning the examination of evidence exculpating Mr. Klykov, in particular, the alibi provided by his partner, friends and neighbours confirming that he was at home sleeping after celebrating his birthday at the time when Mr. Shevelev was murdered, as well as the results of the independent forensic experts' examination of the handwritten confession, certifying that it was not voluntary but dictated and done under pressure.

26. In pronouncing the sentence, the judge did not take into account that there was no link between the material evidence collected, including fingerprints, and the murder of Mr. Shevelev. The judge did not dismiss clearly doubtful confessions allegedly extracted by force in the absence of a lawyer and subsequent records of interviews with Mr. Klykov conducted in the late hours of 15 August 2014 by the investigator, also in the absence of the lawyer of his choice. That testimony was collected in the presence of the lawyer who was conveniently appointed by the investigator for just one day, reportedly to ensure that the forced confession was recorded properly. The source asserts that if the judge had dismissed Mr. Klykov's extorted confession, as well as all other hearsay evidence, there would have been no evidence incriminating Mr. Klykov in the murder.

27. The source argues that Mr. Klykov's pretrial detention for six months was arbitrary, excessive and unnecessary protracted. Reportedly, after completing several proceedings related to collecting and recording the confession forcibly obtained from Mr. Klykov, the investigator did not collect or record any substantial evidence in relation to the murder case. The source affirms that all other proceedings for collecting and recording evidence against Mr. Klykov were completed in August 2014. The forensic experts' assessment of the material evidence collected at the crime scene was completed in November 2014. No further actions were undertaken by the investigator during December 2014 and January

2015, except the belated and unnecessary interrogation of the five police officers who had allegedly tortured and ill-treated Mr. Klykov; two of Mr. Shevelev's co-workers, who did not witness the murder; and the forensic expert who examined the body and did not establish any links between Mr. Klykov and the murder of Mr. Shevelev.

28. The source argues that Mr. Klykov's deprivation of liberty is arbitrary and falls under categories I and III as classified by the Working Group. In particular, Mr. Klykov's deprivation of liberty had no legal basis to justify his arrest on 13 August 2014, as he was taken from his home by police without a warrant and the police subsequently fabricated an administrative offence to so as to be able to lock him up for a few days at the special incarceration centre for administrative offenders at the convenient reach of the police for interrogations. During that time, the police tortured and ill-treated Mr. Klykov and forced him to confess (category I). Mr. Klykov was deprived of his liberty in violation of his right to due process, including the absence of minimum guarantees of fair trial. In particular, Mr. Klykov was refused his right to access a lawyer of his choice from 13 to 15 August 2014; the pretrial investigation was delayed and the investigator did not act with due diligence in searching for, collecting and examining evidence; and the trial judge dismissed all petitions of the defence related to the admissibility of evidence allegedly obtained through torture and ill-treatment by police and refused to examine exculpatory evidence, including Mr. Klykov's alibi and two experts' assessments that the main evidence against Mr. Klykov, his confession, had been dictated and obtained under duress (category III).

Response from the Government

29. The investigating agency for Ust-Labinsk district, a unit of the investigation department for Krasnodar region reporting to the Investigative Committee of the Russian Federation, is in charge of criminal case No. 145970032, instituted on 11 August 2014 on the basis of evidence of an offence contrary to article 105, paragraph 1, of the Criminal Code of the Russian Federation, in connection with the murder of Y.N. Shevelev.

30. In the course of the investigation aimed at identifying the person who committed the crime, police officers E.G. Kuznetsov, D.V. Litvinov and Y.A. Shlykov received information concerning Mr. Klykov's involvement in the crime.

31. The above-mentioned person was arrested on 13 August 2014 for an administrative offence under article 20.21 of the Code of Administrative Offences, i.e. appearing in public places in a state of alcoholic intoxication. Mr. Klykov was arrested because he was in a state of alcoholic intoxication (medical examination report No. 3372 of 13 August 2014), which is offensive to human dignity and public morals. As confirmed by witnesses V.V. Shevlyakov and A.G. Potapov, the detainee refused to sign the report on the administrative offence. The fact that an administrative offence had been committed was corroborated by evidence provided by the above-mentioned persons, the medical examination report and the police report. On 13 August 2014, at 9.30 p.m., following a medical examination, Mr. Klykov was taken to the Ust-Labinsk department of the Ministry of Internal Affairs, where he was placed in administrative detention under article 27.3 of the Code of Administrative Offences. He was held in a cell for administrative offenders in order to ensure that the case was duly examined.

32. As far as claims that Mr. Klykov's fingerprints and photograph were taken without his consent are concerned, it has been established that, on 13 August 2014, after the record of arrest had been drawn up, his fingerprints were taken for identification purposes in accordance with article 9, paragraph (g), of Federal Act No. 128-FZ of 25 July 1998 on State fingerprint registration.

33. No complaints concerning the conditions of his detention or the state of his health were received from Mr. Klykov during the period of his detention (14-15 August 2014) in

the special detention centre for administrative offenders of the Ministry of Internal Affairs Ust-Labinsk district Criminal Investigation Unit. According to the report of officers from the Criminal Investigation Unit, which was approved by the head and deputy head of the Unit, Mr. Klykov was taken out of his cell at 2.30 p.m. on 14 August 2014 (and brought back at 6.35 p.m. the same day without bodily injuries) and at 11.45 a.m. on 15 August (and brought back at 1.55 p.m. the same day without bodily injuries). According to the report on initial medical examinations of persons brought to the Ust-Labinsk district special detention centre, Mr. Klykov was healthy at the time of his arrival at the temporary holding facility on 14 August and of his departure from it on 15 August.

34. On 14 August 2014, upon the instructions of Y.A. Shlykov, an officer from the Ust-Labinsk district department of the Ministry of Internal Affairs, a polygraph examiner from the Ministry's Krasnodar region central department carried out an investigative activity with the complainant's written consent, questioning him using a polygraph with the aim of determining whether he had been involved in Mr. Shevelev's murder. In accordance with article 11 of the Federal Police Investigations Act, an information note prepared on the basis of the results of the questioning was not transmitted to the investigating authority and was not used as evidence in the criminal proceedings. The criminal case file contains an information note dated 3 September 2014, written by the head of the Criminal Investigation Unit, which states that, in the course of a psychological and physiological examination, Mr. Klykov exhibited reactions which indicated that he had information about some significant circumstances surrounding Mr. Shevelev's murder.

35. At 4.25 p.m. on 15 August 2014, with the agreement of the police chief, Mr. Klykov was taken out of the cell for administrative offenders and taken to the Ministry's Ust-Labinsk district department. Between 5 p.m. and 5.46 p.m. he confessed, in writing, to Mr. Shevelev's murder. Mr. Klykov expressed, in writing, his wish to have recourse to lawyer O.E. Guboreva, who then provided her lawyer's accreditation and assignment order.

36. At 6 p.m. on 15 August 2014, Mr. Klykov was detained by an investigator from the Ust-Labinsk district investigating team reporting to the Investigative Committee, in accordance with article 91 of the Code of Criminal Procedure. Between 6.40 p.m. and 8.10 p.m., he was questioned as a suspect. Between 8.30 p.m. and 10.50 p.m., when the evidence provided was being verified, he independently described how he had murdered Mr. Shevelev. Between 11.30 p.m. and 00.20 a.m., Mr. Klykov was questioned as an accused person. Owing to its urgent nature, the investigation had to be carried out at night in order to secure traces of the criminal offence, which does not contradict the provisions of the Code of Criminal Procedure. Moreover, Mr. Klykov consented to the investigation being carried out. As acknowledged by Mr. Klykov in his own hand in a statement he made when he returned to the Ust-Labinsk district temporary holding facility, neither he nor his defence counsel made any complaints upon completion of the investigation.

37. Having admitted his guilt during the preliminary investigation, Mr. Klykov gave detailed information on the merits of the criminal case, which was objectively corroborated by other evidence collected in connection with the case. Moreover, during the questioning, he gave information previously unknown to the preliminary investigating authority and maintained that the victim had attacked him with a knife and that he had acted in self-defence.

38. The record of the confession of 15 August 2014 indicates that Mr. Klykov was informed of his rights provided for under article 51 of the Constitution and it was explained to him that his confession could be used in court as proof of guilt even if he later denied having made the confession.

39. According to expert report No. 3093/04-1/1.1 of 22 December 2014, the handwritten text of the confession was written by Mr. Klykov himself, without his writing having been influenced by any internal or external “disturbing factors”.

40. The case file contains no objective information to the effect that restrictions were placed on his counsel (A.A. Shulga) having access to Mr. Klykov. Prior to the commencement of the investigation, a statement was received from the suspect expressing his agreement to the participation of the court-appointed counsel in the investigation. As soon as the accused submitted his statement on 16 August 2014 about the counsel of the defendant’s choice, the investigator made the necessary arrangements for that counsel’s participation.

41. On 17 August 2014, the Ust-Labinsk district court decided to remand Mr. Klykov in custody as a preventive measure. On 14 October and 10 December, the same court extended the period of detention to a total of six months, i.e. until 15 February 2015. In considering the relevant requests by the investigating authority, the court took into account the results of the investigation, the identity of the accused, who had previous convictions for murder and beatings, his conduct prior to and following his detention and other information which suggested that Mr. Klykov was capable of seeking to falsify and destroy evidence and put pressure on persons involved in the case or otherwise hinder the criminal investigation and court proceedings. There is no evidence of any inefficiency in the way the court proceedings were organized.

42. Based on the results of the investigation, Mr. Klykov’s actions were classified under article 105, paragraph 1, of the Criminal Code, for which he was issued with a final indictment on 17 December 2014. The preliminary investigation was completed in five months, which is in line with laws on criminal trial within a reasonable time. The accused consulted the criminal case file on 5 January 2015, as did A.V. Ivanov, the defence counsel, on 10 January. On 20 January, a bill of indictment was approved by the Ust-Labinsk district prosecutor’s office.

43. On 21 May 2015, on the basis of the results of the investigation, the Ust-Labinsk district court found Mr. Klykov guilty as charged and sentenced him to deprivation of liberty for a term of eight years without additional restrictions, to be served in a strict regime correctional colony. The judicial ruling did not enter into force because the complainant appealed against it under the appeal procedure.

44. At the same time, the court judgment stated that, when committing the crime, Mr. Klykov acted in a consistent and purposeful manner, seemed to be very familiar with the surroundings, at ease under the circumstances and in control of his actions. His conduct during the preliminary investigation and court hearing was appropriate under the circumstances; he gave well-thought-through, consistent testimony. In the course of the trial, after having examined every piece of evidence and assessed it in terms of its relevance, acceptability and authenticity, the court deemed the evidence in its entirety to be sufficient for a decision on the merits of the case and found that Mr. Klykov had been proven guilty as charged. The court was critical of the defendant’s “not guilty” plea, interpreting it as a method of defence aimed at avoiding liability for the crime committed. As the confession had been written by Mr. Klykov in his own hand immediately after the crime, the court did not take into account Mr. Klykov’s arguments about the lack of authenticity thereof. The record of the confession was accepted as admissible evidence. The court found that the defendant’s claims that police officers had used violence against him had not been corroborated and that they contradicted the findings of the forensic examination and the handwriting analysis.

45. Arguments concerning unlawful actions of Mr. Kuznetsov, Mr. Litvinov and Mr. Shlykov, police officers from the department of the Ministry of Internal Affairs for

Ust-Labinsk district, in the course of the investigation were verified by the Ust-Labinsk district investigating team reporting to the Investigative Committee. The verification was prompted by a statement submitted by L.M. Klykov concerning the abduction of her son, Mr. Klykov, by police officers.

46. On 9 May 2015, on the basis of the verification, it was decided not to authorize the institution of criminal proceedings, on the grounds of lack of evidence that a crime had been committed under article 126, paragraph 1, article 285, paragraph 1, or article 286, paragraph 1, of the Criminal Code (abduction of a person, abuse of official position, improper exercise of authority).

47. The following persons were questioned in the course of the verification: E.G. Kuznetsov, D.V. Litvinov, Y.A. Shlykov, E.Y. Korotkova and A.A. Zaichko, officers from the department of the Ministry of Internal Affairs for Ust-Labinsk district; R.A. Sheriev, an investigator from the Ust-Labinsk district investigating team reporting to the Investigative Committee; E.V. Shumalov and V.N. Potolov, officers from the temporary holding facility of the department of the Ministry of Internal Affairs for Ust-Labinsk district; Mr. Klykov's wife, A.V. Guzheva; I.O. Kovalev, head of the Ust-Labinsk unit of the Forensic Medical Bureau State-financed health care institution under the Department of Health for Krasnodar region; and V.M. Sokolova, head of the Bratsk outpatient clinic of the Central District Hospital, a State-funded municipal health care institution in Ust-Labinsk district.

48. The verification showed, inter alia, that neither police officers nor any other persons had resorted to unlawful actions involving prohibited investigation methods or physical or psychological pressure against Mr. Klykov. According to expert conclusion No. 484 of 19 September 2014, no injuries were detected on his body at 9 a.m. His complaints concerning pain in the coccyx area were not caused by traumatic injuries, and no such injuries were detected when an X-ray examination was conducted. According to the logbook of initial medical examinations of persons brought to the Ust-Labinsk district special detention centre, Mr. Klykov was in good health when he arrived at the facility on 14 August 2014 and when he left it on 15 August.

49. In the interest of Mr. Klykov, A.V. Ivanov, his counsel, appealed to the Ust-Labinsk district court, under article 125 of the Code of Criminal Procedure, against the decision not to authorize the institution of criminal proceedings. By its ruling of 26 June 2015, the court rejected his appeal. Owing to the appeal, the court ruling did not enter into force.

50. Nevertheless, it was established during the court hearing that, when the court ruling of 9 May 2015 was issued, the investigator had respected the procedure provided for under articles 20, 144, 145 and 148 of the Code of Criminal Procedure. The disputed decision was taken on valid legal grounds by an authorized official. The court deemed the verification to have been objective and sufficient.

51. Taking into account the above information, it should be noted that there is no objective evidence that Mr. Klykov's detention was arbitrary and he has had the opportunity to avail himself of the right to a fair trial. The complainant has recourse to efficient national legal remedies, which he has not exhausted.

Further comments from the source

52. The source considers that the Russian Federation did not present credible information, testimonies or evidence to sustain the allegation that police officers E.G. Kuznetsov, D.V. Litvinov and Y.A. Shlykov received information that Mr. Klykov had been involved in a crime. The source argues that the only evidence in the file is the confession of Mr. Klykov obtained by duress.

53. The source also maintains that the Russian Federation was not able to contradict the witness presented by the accused, nor the fact that Mr. Klykov was celebrating his birthday at home in the village of Ladozhskaya, with family and friends, at the time in question, as reflected in the testimonies of Anna Victorovna Guzheva and Veronika Andreevna Mamail. Therefore, the source affirms, Mr. Klykov was not detained by police officers at the intersection of Lenin Street and Obodovsky Street in Ust-Labinsk, nor had he committed the administrative offence of which he was accused. The source presented a certificate from the Central District Hospital that attests that Mr. Klykov did not undergo any medical test for alcohol intoxication between 13 August and 31 December 2014.

54. The source also mentions that during his administrative detention Mr. Klykov was not granted the right to a phone call and could not inform his family or colleagues about his whereabouts, nor did he have the opportunity to exercise his right to immediate legal assistance.

55. The source presents information on the dismissal of Mr. Klykov's appeal against the decision of the magistrate's court, circuit No. 224 of the Ust-Labinsk district court of Krasnodar territory, of 14 August 2014, which found him guilty of an administrative offence. In the view of the source, the tribunal did not take into account the allegations of arbitrary detention, the alibi, the violation of the right to a defence and other circumstances.

56. The source refutes the claim of the Russian Federation that Mr. Klykov did not submit any complaints about his health during his detention in the special remand centre for persons held in administrative detention and that he was healthy at the time of his remand in custody at the temporary holding centre. The source presents information about Mr. Klykov's claim, made before the investigation authorities and in court, that he was subjected to torture and ill-treatment. Those facts were corroborated by a witness, Nikolai Kanishchev, who was in the same cell as Mr. Klykov. The source also reports that the defence had pleaded for a writ of certiorari to be issued and a review of the documents to be carried out in order to confirm Mr. Klykov's statements; however, the petition was dismissed without reason.

57. With regard to the use of a polygraph, which, in the view of the Russian Federation, brought to light reactions on the part of Mr. Klykov demonstrating that he had information about the circumstances of the crime, the source alleges that Mr. Klykov did not give his consent for that interview to be conducted and therefore the information obtained through the polygraph test was not part of the criminal case file, nor was it assessed. The credibility of the interview with the use of a polygraph has been cast into serious doubt.

58. The source is of the view that Mr. Klykov had signed his confession against his will under circumstances of psychological pressure, physical force and arbitrary deprivation of liberty, which are corroborated in the appended documents. The confession was signed under duress, without the possibility of exercising his right of defence. Mr. Klykov was refused access to a lawyer, despite the fact that his mother, Lyudmila Klykova, had engaged a lawyer, Andrei Shulga, on his behalf. While he was being subjected to repeated and exhausting interrogations and physical abuse, his requests for a lawyer to be made available to him were rejected. He was deliberately isolated from his defence counsel and the outside world until he had signed the confession.

59. According to the source, the confession was dictated to Mr. Klykov by police detectives, a fact which was pointed out on several occasions in the course of the preliminary and judicial investigations. According to the findings of credible experts from the consulting firm Koltunov and Partners on 11 December 2014, the confession was dictated to Mr. Klykov. The confession contains a number of elements of language that are not characteristic of Mr. Klykov's speech and illogical or inconsistent statements. The experts stated that the accused person was in a depressed, confused and passive state when

the statement was written; they also stated that a linguistic analysis of the text showed that Mr. Klykov could have been coerced. However, in breach of the law, the court did not allow this conclusion to be entered into evidence.

60. The source reports that the defence repeatedly pleaded for the exclusion of the confession and subsequent records of all investigative activities from the time that Mr. Klykov was actually deprived of liberty to 16 August 2014, given that the evidence was obtained through the use of ill-treatment and the confession was not voluntary, in violation of Mr. Klykov's constitutional rights. Nevertheless, the pleas were dismissed by the court.

61. In relation to the assertion of the Russian Federation that according to the expert's findings, the written text of the confession was drafted in Mr. Klykov's hand, the source argues that the expert assessment was conducted by a person not competent to perform the task, as he had less than three years' work experience. The person who conducted the assessment did not submit documents showing that he was entitled to conduct an independent assessment; furthermore, he had received higher education in land development, reclamation and conservation, which have nothing to do with jurisprudence or handwriting analysis or linguistics. Furthermore, the findings of the person are contradicted by the findings of competent experts, whose conclusions were completely ignored by the Russian Federation. As a result, the serious irregularities that were permitted during the assessment of authorship made it possible for the Russian Federation to draw erroneous conclusions.

62. The Russian Federation maintains that there were no objective facts in the case file which showed that Mr. Klykov's right of defence had been violated. However, according to the source, this information is untrue as, under European standards, access to a lawyer is recognized as a basic component of the right of defence in criminal proceedings and provided for under article 14 of the International Covenant on Civil and Political Rights and articles 5 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

63. The source argues that in considering the right of the accused to obtain the assistance of a lawyer as extending to the pretrial stage of the proceedings,² the European Court of Human Rights has ruled on a number of occasions that denying a detainee's access to a lawyer during the first hours of a police interrogation in situations in which the right of defence could be irreparably affected is incompatible, regardless of the grounds for such a denial, with the rights of the accused under article 6 (3) (c) of the European Convention on Human Rights.³ Furthermore, charges, within the meaning of article 6 of the European Convention, encompass not only formal notification of the charges brought but also other measures involving the suspicion of a crime that have serious implications or a major impact on the situation of the suspect,⁴ i.e. it is necessary to consider the substance of the charges rather than the procedural aspects.

64. According to the source, before drafting the confession, Mr. Klykov found himself in isolation from society and fully dependent on the law enforcement authorities. He was

² The source cites in this regard the following cases of the European Court of Human Rights: application No. 12744/87, *Quaranta v. Switzerland*, judgment of 24 May 1991, para. 27; and application No. 13972/88, *Imbrioscia v. Switzerland*, judgment of 24 November 1993, para. 36.

³ The source cites in this regard application No. 18731/91, *Murray v. United Kingdom*, judgment of 8 February 1996, para. 66.

⁴ The source cites in this regard the following cases: application No. 6903/75, *Deweere v. Belgium*, judgment of 27 February 1980, paras. 44 and 46; application No. 8130/78, *Eckle v. Germany*, judgment of 15 July 1982, para. 73; and application Nos. 7604/76, 7719/76, 7781/77 and 7913/77, *Foti and others v. Italy*, judgment of 10 December 1982, para. 52.

not initially read his rights, including the fundamental right to avail himself of a defence lawyer, and he was not given a real opportunity to exercise those rights. As the information set out in the confession was not confirmed by him, he refuted it during the preliminary and court investigations. On the contrary; before the confession was signed, he was in particular isolated from the lawyer engaged by Lyudmila Klykova. The investigative activities were later conducted with the participation of a lawyer who was assigned to him by the law enforcement officials. Only after he had signed the confession and urgent investigative action was taken against him was the lawyer he had engaged, Andrei Shulga, allowed to see him.

65. The source claims that it was established that the lawyer assigned by the law enforcement officials did not act in Mr. Klykov's interests but rather in violation of his rights, which made his situation worse and allowed the investigating officers who had used force to avoid criminal liability. The bar association has instituted disciplinary proceedings against the lawyer who acted in violation of the rights and interests of Mr. Klykov.

66. The source refers to the claim of the Russian Federation that Mr. Klykov was remanded in custody as a preventive measure, with due account for the requirements of the law and the personal background of the accused. The source also states that current practice in the country shows that persons are arbitrarily remanded in custody, without regard for the requirements of national law or international standards. The investigator presented no evidence to demonstrate the need for imposing the more severe preventive measure. The arguments of the defence were not taken into account by the court. However, while the preventive measure against Mr. Klykov was being imposed and prolonged, his lawyer repeatedly pointed out the arbitrary nature of the detention and the use of force and ill-treatment aimed at obtaining a confession. The appeal to the court against the extension of the preventive measure was to no avail and the arguments set out in the complaints to the courts were ignored.

67. Furthermore, according to the source, the Russian Federation asserted that the court had determined that Mr. Klykov's guilt was fully proved and that changing his testimony was a way of avoiding criminal liability. His arguments that the confession was extracted from him under duress and did not reflect reality were not taken into consideration by the court.

68. However, the source considers that the judgment was based on the involuntary confession of Mr. Klykov. There was no other direct evidence in the case. With regard to the remaining evidence, the source refers to the false testimony of persons called as witnesses who did not even witness the crime and forensic analysis which did not prove that Mr. Klykov was involved in the crime.

69. According to the source, the court did not take into account the evidence which proved Mr. Klykov's innocence nor did it assess it, which gives grounds for finding a violation by the Russian Federation of the right to a fair trial. The practice of admitting dubious statements of confession signed under duress in conditions of deprivation of liberty and in violation of the right to a defence is systematic in the Russian Federation. The courts traditionally have regarded subsequent changes to the recorded evidence and refusal to acknowledge guilt as a way for the defence to avoid criminal prosecution and conviction.

70. The source notes that the Russian Federation maintains that the claims of misconduct by police officers were followed up but were not corroborated. Mr. Klykov has consistently maintained that Y.A. Shlykov, D.V. Litvinov, D.A. Kvitko, D.V. Kharchenko and S.A. Kostinym, criminal detective officers of the Department of the Ministry of Internal Affairs for Ust-Labinsky district, used force against him in order to get him to confess to a crime that he did not commit. However, the investigations that were carried out were ineffective and pro forma and did not respect Mr. Klykov's rights or take into account

his views or the views of his lawyer about the circumstances, which are set out in detail in the petition for appeal.

71. That Mr. Klykov was arbitrarily deprived of liberty and denied the possibility of mounting an effective defence in the national courts is attested to by the fact that all the arguments made by him were set aside by the Russian Federation and that, on the other hand, information submitted by the field agents who permitted the use of force against him was unquestioningly taken into account by the investigator, the procurator and the court.

72. There are thus compelling arguments and evidence showing that Mr. Klykov's right to liberty, to be free from torture and to a fair trial were violated, resulting in arbitrary detention, the use of force and criminal prosecution.

Discussion

73. The Working Group received credible information from the source that on 13 August 2014, in the evening, Mr. Klykov was arrested by police officers at his home address in the village of Ladozhskaya, while he was celebrating his birthday with family and friends (as reflected in the testimonies of Anna Victorovna Guzheva and Veronika Andreevna Mamail). The Government of the Russian Federation did not refute this information and did not present detailed information relating to the modalities of the time, place and circumstances of the alleged detention of Mr. Klykov by police officers at the intersection of Lenin Street and Obodovsky Street in Ust-Labinsk, nor presented convincing information related to the administrative offence attributed to him. The Government of the Russian Federation and the source disagree about the existence of a medical certificate stating that Mr. Klykov was under the influence of alcohol.

74. The Government of the Russian Federation did not present to the Working Group relevant information concerning the arrest warrant or relating to whether the police had informed Mr. Klykov about the reasons for his detention. The Government also failed to present information relating to the legal representation of Mr. Klykov throughout the process. The magistrate's court of the Ust-Labinskyi district found Mr. Klykov guilty of violating section 20.21 of the Code of Administrative Offences by disturbing the public peace and order by appearing drunk in a public place, i.e. at the crossroad of Lenin and Obodskyi Streets in Ust-Labinsk, at 8.50 p.m. on 13 August 2014. Mr. Klykov was sentenced to 15 days of administrative imprisonment and put in a cell of the special incarceration centre for administrative offenders on 14 August. During another investigation, Mr. Klykov was taken from his cell to the police station by the same two police officers who had arrested him the day before. At the police station, Mr. Klykov was informed that he was suspected of having murdered Yuriy Shevelev, who was killed while guarding the storehouse of prison colony No. 3 at approximately 3.30 a.m. on 11 August.

75. The Working Group is convinced that on 15 August 2014, Mr. Klykov was coerced by means of torture to write a confession. The Government of the Russian Federation confirmed that the confession was not excluded from the trial, having been accepted as admissible evidence in contravention of the State's international human rights obligations.

76. With regard to the practice of torture in the Russian Federation, the Working Group is aware of the most recent report of the Committee against Torture on the Russian Federation. In that regard, the Committee expressed concern over the widespread practice of torture and ill-treatment to extract confessions and the large number of complaints of torture and the small number of prosecutions. The Committee urged the Russian Federation

to combat torture, to investigate allegations of torture and to exclude from evidence confessions obtained through the use of torture.⁵

77. The Working Group considers that Mr. Klykov was a victim of torture and forced to confess to a crime and that his confession was used in the judicial proceedings against him, in violation of treaty and customary international law relating to the absolute prohibition of torture.

78. The Working Group considers that persons deprived of their liberty shall have the right to legal assistance by the counsel of their choice, at any time during their detention, including immediately after the moment of apprehension. Upon apprehension, all persons shall be promptly informed of this right. The Working Group also affirms that legal counsel are to be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment. Authorities shall respect the privacy and confidentiality of legal counsel-detainee communications.⁶ Access shall be provided without delay to legal counsel immediately after the moment of deprivation of liberty and at the latest prior to any questioning by an authority, and thereafter throughout the period of detention.⁷

79. The Working Group also received credible information according to which the procedural actions that took place on 13, 14 and 15 August 2014 were conducted by a public defender who was not freely designated by Mr. Klykov and who acted against the rights and interests of the client. The Working Group received convincing information that until 16 August 2014, Mr. Klykov could not have access to his designated lawyer.

80. In this respect, the Working Group is aware of the findings of the Committee against Torture related to the right of any person to have access to a lawyer of her or her choice. The Committee concluded that the Russian Federation failed to ensure this right in practice and that State-appointed defence lawyers did not perform their duties properly. Defendants were not assigned legal aid prior to their initial interrogations and were denied their right to inform their families of their detention. Furthermore, the Russian Federation did not provide for the right of all persons deprived of liberty to an independent medication examination promptly.⁸

81. In this context, the Working Group recalls that the Committee recommended to the Russian Federation that it:

(a) Ensure that all detainees are afforded, by law and in practice, the right to access a lawyer, contact family members, be informed of the charges against them and request and receive a medical examination by an independent physician promptly upon actual deprivation of liberty;

(b) Ensure that all detainees are provided with qualified lawyers who will conduct a proper defence, and independent legal aid;

(c) Maintain video recordings of all interrogations and install video surveillance in all areas of custody facilities where detainees may be present, except in cases where detainees' right to privacy or to confidential communication with their lawyer or a doctor may be violated. Such recordings should be kept in secure facilities and made available to investigators, detainees and their lawyers.⁹

⁵ See CAT/C/RUS/CO/5, paras. 6 and 10.

⁶ See A/HRC/30/37, annex, principle 9.

⁷ Ibid., guideline 8.

⁸ See CAT/C/RUS/CO/5, para. 9.

⁹ Ibid.

82. On 16 August 2014, the newly designated defence lawyer for Mr. Klykov petitioned the relevant authorities to initiate a disciplinary and criminal investigation into the kidnapping, torture and ill-treatment of Mr. Klykov. The Government did not conduct an effective investigation. The source also presented relevant information related to disciplinary proceedings instituted by the bar association against the lawyer who had acted against the rights and interests of Mr. Klykov.

83. The Working Group is convinced that the judge did not dismiss the confession allegedly extracted by force and other relevant evidence, including the records of the interviews conducted with Mr. Klykov in the late hours of 15 August 2014 in the absence of the lawyer of his choice.

84. In view of the above, the Working Group on Arbitrary Detention considers that the detention of Mr. Klykov is arbitrary, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

Disposition

85. In the light of the foregoing, the Working Group renders the following opinion:

The Working Group on Arbitrary Detention considers that the detention of Alexandr Klykov is arbitrary and falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

86. Under relevant international law, victims of arbitrary detention are entitled to seek and obtain effective remedies and reparations from the State, which includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In conformity with this opinion, the Working Group recommends that the Government of the Russian Federation provide to Mr. Klykov with full reparations, starting with his immediate release.

87. In accordance with paragraph 33 (a) of its methods of work, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 21 April 2016]