

United Nations Human Rights Monitoring Mission in Ukraine

Briefing note

**Accountability for Killings and Violent Deaths
on 2 May 2014 in Odesa**

Accountability for Acts of Killing and Violent Deaths in Odesa, Ukraine

Overview of cases related to the 2 May 2014 violence

ACCOUNTABILITY FOR ACTS OF KILLING

1 case on trial

1 Perpetrator: 'pro-unity' supporter accused of killing a 'pro-federalism' supporter
 Malynovskiyi district court of Odesa
 Consideration on the merits not yet started

Concerns

- Multiple transfers among district courts
- Revision of indictment
- Interference with the independence of the judiciary and lawyers

1 case ongoing

No perpetrators have been identified yet in the killing of 5 men in the city centre.

Odesa regional police
 Cases still under investigation

Concerns

- Biased, ineffective, politically motivated



ACCOUNTABILITY FOR FAILURE OF THE DUTY TO RESCUE

Cases against former officials from Odesa regional police and Odesa city police accused of negligence and failure of their duty to rescue

2 cases on trial

3 Perpetrators: former Head of Odesa city police and two high-ranking police officials

Prymorskyi district court

- Undue delays
- Preliminary hearing has not yet started

1 Perpetrator: former Head of Odesa regional police

Prymorskyi district court

- Undue delays
- Consideration on the merits

1 case ongoing

1 Suspect: former Deputy Head of Odesa regional police

PGO [Suspect fled from Ukraine allegedly to the Russian Federation]

Cases against former officials/fire-fighters of the Odesa regional department of State Emergency Service accused of failure to perform their duty to rescue

2 cases on trial

3 Perpetrators: Former Deputy Head and two mid-level officials of Odesa regional department of State Emergency Service
 Kyivskiyi district court of Odesa

- Undue delays
- Preliminary hearing not yet started

1 Perpetrator: Separate case against the former First Deputy Head of Odesa regional department of State Emergency Service
 Prymorskyi district court of Odesa

1 case ongoing

1 Suspect: Former Head of Odesa regional department of State Emergency Service

Odesa regional police / PGO [Suspect fled to the Autonomous Republic of Crimea, Ukraine, temporarily occupied by the Russian Federation]

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I. EXECUTIVE SUMMARY

1. Since its deployment in March 2014, the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU) has monitored, publicly reported and advocated on the human rights situation in Ukraine.¹

2. This briefing note emphasizes the need to ensure justice for the 48 people who lost their lives and for the estimated 247 people² who sustained injuries on 2 May 2014 in Odesa during the clashes between two groups holding differing views about the state structure of Ukraine. The 2 May 2014 events can be divided into two incidents: (i) the unrest in the city centre during which six men were shot dead, and (ii) the unrest in Kulykove Pole square followed by the fire in the House of Trade Unions, which claimed the lives of 42 people.

3. The clashes started in the city centre, wheresome 2,000 people who had gathered for the “March for unity of Ukraine” (the so-called ‘pro-unity’ supporters) were attacked by a group of some 300 people who supported the idea of federalisation of Ukraine (the so-called ‘pro-federalism’ supporters).³ Six men from either one of the clashing groups sustained lethal gunshot injuries as the police failed to prevent and appropriately respond to the escalating violence.

4. Forty-two individuals (34 men, seven women and one boy) died as the unrest continued in Kulykove Pole square, where some 300 ‘pro-federalism’ supporters barricaded themselves in the House of Trade Unions as ‘pro-unity’ supporters attacked them and burned the tents they had erected on the square. Thirty-two ‘pro-federalism’ supporters died inside the building as it was set on fire by Molotov cocktails that both groups threw at each other; ten more died of lethal injuries they sustained after jumping or falling out of the windows to escape the fire. Firefighters (stationed 600 metres away from the House of Trade Unions) arrived at the scene approximately 40 minutes after they began receiving multiple emergency phone calls.

5. Five years on, there has still not been any accountability for the killings of six and violent deaths of 42 individuals. Some of the criminal proceedings launched after the tragic events have stalled at the pre-trial investigation stage, while others did at the trial stage. This suggests a lack of genuine interest from the authorities to ensure justice for victims and accountability for perpetrators.

6. HRMMU is concerned that the police investigations into the clashes in the city centre and the fire in the House of Trade Unions may not meet the criteria of independence and impartiality, given the allegations of police forces’ complicity in this case.⁴ In addition, HRMMU notes that the investigation into the clashes in the city centre appears to be selective: out of 29 individuals prosecuted in relation to the clashes in the city centre, 28 were ‘pro-federalism’ supporters. At the same time, five years after the fire in the House of Trade Unions, the police have failed to identify

¹ See para 4.1.a) and b) of the Agreement between the Government of Ukraine and the United Nations Office of the High Commissioner for Human Rights (OHCHR) on deployment of the short-term human rights monitoring mission in Ukraine of 31 July 2014. Full text of the Agreement is available from: http://zakon.rada.gov.ua/laws/show/995_001-14 (accessed 12 April 2019). OHCHR has expressed concern about the lack of progress in investigations and prosecution of the killings and violent deaths of 48 people during the 2 May violence in its periodic public reports on the human rights situation in Ukraine from June 2014. Full texts of the reports are available from: <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/UARports.aspx> (accessed 12 April 2019).

² See OHCHR Report on the Human Rights Situation in Ukraine, covering the period from 7 May to 7 June 2014, para 49.

³ Following the political changes in Ukraine in February 2014 as well as the occupation of the Crimean peninsula by the Russian Federation, groups of protesters (referred to in this paper as ‘pro-federalism’ supporters) expressed their disagreement with the newly formed government and called for the federalisation of Ukraine. In contrast, ‘pro-unity’ supporters were holding public demonstrations in support of a united Ukraine.

⁴ See the report of the International Advisory Panel on its review of the investigations into the tragic events in Odesa of May 2014, para 206, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048851b>.

individual perpetrators responsible for the fire. According to the police and General Prosecutor's Office, the main impediments to investigations are difficulties in identifying all individuals involved in the clashes.

7. HRMMU also notes that some identified suspects managed to abscond and therefore remain outside the reach of Ukraine's justice system. These include the former deputy head of Odesa regional police department, responsible for maintaining public order on 2 May 2014, and the former head of Odesa regional department of the State Emergency Service, responsible for the deployment of fire fighters. Both managed to flee a few days before being served notices of suspicion by the prosecutor's office and police respectively. According to the Prosecutor General's Office, extradition requests sent to the Russian Federation have been disregarded, as both suspects were allegedly granted its citizenship.

8. Furthermore, in cases where the investigation had identified suspects, trials have not progressed. The case of the only individual accused of killing another participant of the clashes in the city centre is emblematic in this regard. Four years after completion of the investigation, the court is yet to start consideration of the case on the merits. The case was transferred between all four district courts of Odesa, and was with the prosecution for more than a year as it revised the indictment, before ending up at one of the district courts of Odesa yet again, which has scheduled the first hearing on the merits on 13 May 2019.

9. Similarly, the cases of senior officials from the police and State Emergency Services have stalled at the trial stage; four senior officials of Odesa police are charged with negligence and failure of their duty to rescue 48 people who died on 2 May 2014, and two former deputy heads and two mid-level officers of the regional department of the State Emergency Service are charged with failure of their duty to rescue 42 individuals who died in fire. The delays have been caused by the poor quality of indictments, which have been returned to the prosecution for revision, infrequency of court hearings and failure of the authorities to ensure notification and presence of all victims during the preparatory hearings, calling into question the authorities' willingness to genuinely pursue accountability for the events and discouraging victims and witnesses from participating in these trials.

10. HRMMU further noted the persistent disruptive behaviour of 'pro-unity' supporters in court hearings, which in some cases may amount to interference in the independence of judges and lawyers. The police not only tolerated this behaviour in the court, failing to ensure safety of all participants of the proceedings, they also did little to investigate these incidents. The police referred to difficulties in identifying perpetrators. This is despite the fact that some of these individuals were known, having repeatedly insulted, intimidated and physically abused judges, defendants and their lawyers in the presence of the police. Such a lack of appropriate response from law enforcement has had a chilling effect on judges and resulted in numerous selfrecusals of judges and transfers of the proceedings to other district courts, which in turn has then led to the necessity of restarting the trials.

11. Based on the above, HRMMU notes with concern that the authorities have not done what it takes to ensure prompt, independent and impartial investigations and prosecution of the acts of killing and violent deaths caused during the 2 May violence.

II. METHODOLOGY

12. This briefing note is based on HRMMU monitoring of the incidents that took place in the city centre and in Kulykove Pole square on 2 May 2014, detention visits and interviews with witnesses, victims and their lawyers, and trial monitoring coupled with a comprehensive analysis of court decisions, and of information provided by representatives of the Government of Ukraine, as well as publicly available information. Findings are included in the briefing note where the "reasonable grounds" standard of proof is met. The standard is met when a sufficient and reliable body of primary information collected through interviews (with victims, witnesses, relatives of victims and lawyers), site visits, meetings with Government representatives, civil society and other interlocutors, and trial monitoring is consistent with secondary information assessed as

credible and reliable, such as reviews of court documents, official records, open-source material, and other relevant materials.

III. INVESTIGATIONS AND PROSECUTION OF THE ACTS OF KILLING AND VIOLENT DEATHS DURING THE 2 MAY VIOLENCE

13. This briefing note provides a summary of investigations and prosecution in relation to different categories of perpetrators who played a role in the killings and violent deaths of 48 people on 2 May 2014 in Odesa. It comprises three subchapters: the first subchapter relates to the clashes and the acts of killing of six people in the city centre; the second subchapter looks into the actions of the clashing groups that resulted in setting the House of Trade Unions on fire, and the conduct of the State Emergency Service that led to the deaths of 42 people; the third subchapter looks into the conduct of the police officials during both above incidents.

Focus: Mass disorder and acts of killing in the city centre

Where: Odesa city centre (Hretska Street, Hretska square, Vice-admiral Zhukov Lane)

Context:

The conflict between ‘pro-unity’ and ‘pro-federalism’ supporters in Odesa started in late January 2014, reaching its peak on 19 February 2014, when a group of local journalists was attacked by ‘pro-federalism’ supporters in front of the Odesa State Regional Administration. During March-April 2014, the two opposing groups assembled for rallies in Odesa every week without excessive violence. On 2 May 2014, around 300 well-organised ‘pro-federalism’ supporters attacked the “March for unity of Ukraine” comprising of about 2,000 people, including a large number of football fans, who had arrived from Kharkiv for the football game that was taking place later that day, local citizens and ‘pro-unity’ supporters. Clashes between the two groups broke out, lasting several hours. Both groups used firearms, as a result of which six people were shot and killed.

Victims (six men):

Six men died of gunshot wounds sustained in the epicentre of clashes near Hretska Square. Two belonged to ‘pro-unity’ groups and four to ‘pro-federalism’ groups:

- Andrii Biriukov;
- Ihor Ivanov;
- Yevhen Losinskyi;
- Hennadii Petrov;
- Mykola Yavorskyi;
- Oleksandr Zhulkov.

3.1. Mass disorder in the city centre and individual acts of killing of six men

14. The main department of the National Police in Odesa region is investigating the mass disorder in the city centre under preliminary qualification of intentional killing, intentional destruction or damaging property, mass disturbances, hooliganism and violence against law enforcement officers.

15. As of April 2019, the National Police have identified and charged 29 individuals who participated in the mass disorder, of them 28 belonged to ‘pro-federalism’ groups and one to ‘pro-unity’ groups. The latter was the only person prosecuted in relation to the killing on 2 May 2014 (Yevhen Losinskyi). Investigations into the killings of five other men – Andrii Biriukov, Ihor Ivanov, Hennadii Petrov, Mykola Yavorskyi and Oleksandr Zhulkov are ongoing with no suspects identified to date.

Prosecution of the killing of Yevhen Losinskyi

16. On 18 May 2014, the police arrested a person belonging to ‘pro-unity’ groups on suspicion of killing Yevhen Losinskyi, ‘pro-federalism’ supporter, and attempted killing of a police officer during the unrest in the city centre.⁵

17. The suspect was transferred to Kyiv for a court hearing on a measure of restraint, however, due to a large presence of his fellows belonging to the same groups who came to the court to support the suspect and demanded his release, on 20 May 2014, the court placed the latter under house arrest and he returned to Odesa. Since November 2014, he is under no measure of restraint, as the maximum duration of the house arrest expired.⁶

18. In April 2015, the police completed the criminal investigation and, on 20 April, the indictment was sent to the Prymorskyi district court of Odesa. The court started consideration of the case with a hearing on 23 June 2015, which

was disrupted by a member of Parliament, and ‘pro-unity’ supporters (mostly men, wearing paramilitary uniform and balaclavas). During subsequent hearings, ‘pro-unity’ supporters violently prevented relatives of the victims of the 2 May violence, mostly women and elderly people, and ‘pro-federalism’ supporters from attending. Furthermore, during court hearings in October-December 2016, ‘pro-unity’ supporters openly threatened to kill a lawyer representing ‘pro-federalism’ victims. Police ensured the lawyer’s physical security during the hearings but failed to investigate the death threats.

19. From June 2015 to March 2016, three district courts of Odesa refused to consider the case, referring to the lack of judges, their involvement in consideration of the case at the pre-trial stage, and fear of possible disturbances by radical supporters of the accused, and insisted on the

⁵ The suspect was charged with article 115 (intentional killing), article 348 (attempt on the life of a police officer), and article 294 (unrest) of the Criminal Code of Ukraine.

⁶ According to article 181 of the Criminal Procedure Code of Ukraine, the aggregate duration of house arrest during pre-trial investigation may not exceed six months. Upon termination of this period, the ruling concerning the application of the measure of restraint in the form of house arrest is no longer valid, and the measure of restraint shall be deemed void.

transfer of the case to other district courts.⁷

20. On 5 January 2017, almost two years after completion of the investigation and transfer of the case for trial, the last remaining district court of Odesa ruled to return the indictment to the prosecution for revision, citing the unclear legal qualification of the imputed crimes.

21. It took the prosecution more than eighteen months to revise the indictment and in July 2018, it was sent back to the Prymorskyi district court of Odesa. Due to a lack of judges to form a panel for consideration of the case (all available judges had been involved in consideration of the case at the pre-trial stage), the Odesa court of appeal ruled to transfer the case for the second time to the Malynovskyi district court of Odesa.

22. Nine months after the Malynovskyi district court of Odesa registered the case the consideration on the merits of the case had not yet started due to the non-appearance of the prosecutor, disruption of hearings by ‘pro-unity’ supporters and failure of the court to select the jury. In addition, due to reported excessive workload of judges, hearings are only scheduled once a month.

23. HRMMU is concerned with interference in the independence of the judiciary and lawyers by the radical supporters of the defendant, and failure of the police to prevent and investigate them. This poses serious impediments to the impartial consideration of the case. In addition, having taken note of excessive workload of judges that results in delays in the trial, HRMMU recalls that when delays are caused by a lack of resources supplementary resources should be allocated for the administration of justice.⁸

Investigation into the killings of five men in the city centre

24. As of April 2019, the perpetrators responsible for the killings of Andrii Biriukov, Ihor Ivanov, Hennadii Petrov, Mykola Yavorskyi and Oleksandr Zhulkov had not been identified by the police investigation. As was established by the Council of Europe International Advisory Panel, the difficulties in identification of perpetrators of these killings relate to lack of precise information on how some of them sustained lethal injuries (three of them were pronounced dead in the hospital) and failure to seal off the crime scene.⁹ Reportedly, the police were also not available to identify all weapons used to kill all five victims or to connect the weapons used with their owners.

25. Instead, the police have focused on investigation and prosecution mainly on ‘pro-federalism’ supporters, for alleged participation in the unrest in the city centre.¹⁰

26. The most notable criminal case, highlighting the partiality and bias of the investigation and prosecution, is the case against 19 alleged ‘pro-federalism’ supporters charged with participating in the unrest in the city centre.¹¹ On 18 September 2017, the Illichivskyi town court of Odesa region acquitted all 19 accused, stressing the ineffective investigation and the biased and

⁷ Initially, in April 2015, the case was admitted by the Prymorskyi district court of Odesa. Following the decision of the Court of Appeal of Odesa region, it was forwarded to the Malynovskyi district court of Odesa, which refused to consider the case. Then, in February 2016, the Suvorovskyi district court of Odesa refused to consider the case and it was forwarded to the Kyivskyi district court of Odesa.

⁸ See Human Rights Committee General Comment no. 32 Article 14: Right to equality before courts and tribunals and to a fair trial, para 27.

⁹ See the report of the International Advisory Panel on its review of the investigations into the tragic events in Odesa of May 2014, para 131, available from:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048851b>.

¹⁰ As of April 2019, in addition to the case against 19 alleged ‘pro-federalism’ supporters, law enforcement have charged another six ‘pro-federalism’ supporters. For example, see the verdict of the Kyivskyi district court of Odesa of 19/12/2017, available from:

<http://reyestr.court.gov.ua/Review/71088949> (accessed 12 April 2019).

¹¹ The charges were brought under part 2 of article 294 (unrest) of the Criminal Code of Ukraine, which carries a punishment from eight to fifteen years imprisonment.

politically-motivated prosecution of alleged ‘pro-federalism’ supporters for their participation in the 2 May 2014 events in Odesa. Following the acquittal, all five detainees who had been in pre-trial detention since May 2014 were released.¹² Nevertheless, immediately after their acquittal, the prosecution unlawfully arrested two of the men (just released) in the courtroom under new charges, including “preparing the organisation of the unrest”.¹³ The prosecution appealed the acquittal and in January 2018, the case was registered by the Mykolaiv court of appeal. However, as of April 2019, the court is yet to start consideration of the case.

27. The poor quality of the pre-trial investigation and the prosecution’s politically-motivated focus on ‘pro-federalism’ supporters create additional obstacles for the identification of the actual perpetrators and hinder accountability efforts.

¹² See the verdict of the Illichivskyi town court of Odesa region dd. 18/09/2017. Available from: <http://reyestr.court.gov.ua/Review/68926870>.

¹³ On 18 October 2017, the Court of Appeal of Odesa region found that law enforcement officials did not record the detention of both suspects from the time of their arrest until the announcement of the court decision on their pre-trial detention on 19 September 2017. As a result, the Court of Appeal concluded that the detention was unlawful and obliged the Odesa regional prosecution to launch a criminal investigation into arbitrary detention. The Odesa regional prosecution ignored the decision. The court decision is available from: <http://reyestr.court.gov.ua/Review/69748399> (accessed 12 April 2019).

Focus: Mass disorder in Kulykove Pole square that resulted in the fire in the House of Trade Unions leading to death of 42 people, and misconduct of the State Emergency Service

Where: Kulykove Pole square

Context:

In the evening of 2 May 2014, following the unrest in the city centre, the violent confrontation between the two groups continued in Kulykove Pole square. Around 300 'pro-federalism' supporters barricaded themselves inside the House of Trade Unions. At approximately 7 p.m. a mob of some 1,000 'pro-unity' supporters gathered in Kulykove Pole square. They destroyed a few tents erected there by the 'pro-federalism' supporters and surrounded the House of Trade Unions. Both groups threw Molotov cocktails into and from the building, setting it on fire.

Odesa regional department of the State Emergency Service failed to respond in a timely manner to numerous calls alerting them to the fire in Kulykove Pole square. Despite the fact that the nearest fire station is located just 600 m from the House of Trade Unions, firefighters arrived only 40 minutes after first being alerted to the fire.

Altogether, 42 'pro-federalism' supporters (including one boy) died in the incident: 32 people died as a result of the fire in the House of Trade Unions and another ten died of injuries they sustained after jumping or falling from windows.

Victims (34 men, one boy and seven women):

Women:

- Khrystyna Bezahanytska, Svitlana Pikalova, Nina Lomakina, Alla Poluliakh, Iryna Yakovenko, Hanna Verenikina and Liubov Halahanova.

Men:

- Volodymyr Bryhar, Oleksii Balaban, Leonid Berezovskyi, Andrii Hnatenko, Yevhenii Hnatenko, Petro Kair, Hennadii Kushnarov, Mykola Kovriha, Serhii Kostyukhin, Oleksandr Kononov, Ihor Lukas, Serhii Mishyn, Yevhenii Mitchyk, Dmytro Nykytiuk, Volodymyr Novytskyi, Viktor Polovyi, Oleksandr Pryimak, Viktor Stepanov, Oleksandr Sadovnychyi, Mykhailo Shcherbinin, Andrii Brazhevskiy, Viacheslav Markin, Vadym Nehaturov, Taras Sharf, Viktor Bullakh, Ihor Zaiats, Ruslan Kushch, Anatolii Kalin, Maksym Nykytenko, Ihor Ostrozniuk, Mykhailo Viacheslavov, Dmytro Ivanov, Ivan Milev, Yurii Karasov and Vadym Papura (boy).

3.2. Mass disorder in Kulykove Pole square that resulted in the death of 42 people

28. The investigation into Kulykove Pole incident is conducted by the Odesa regional department of National Police. The police investigate the deaths of 42 people who died either inside the burning House of Trade Unions or after jumping or falling out of the building. In addition, the police is responsible for investigation of the misconduct of the officials of the State Emergency Service.

Investigation of acts causing the death of 42 civilians in the House of Trade Unions

29. Five years on, the investigation into the fire in the House of Trade Unions is still on-going, without significant results. HRMMU notes that the police have yet to identify individual perpetrators responsible for causing the fire.

30. As a part of the investigation, on 11 March 2016, the Kyiv City Bureau of Forensic Examinations was commissioned to perform 34 forensic and medical examinations to establish the cause of death of 34 people inside the House of Trade Unions. The experts were tasked to answer the questions whether the deaths could have occurred as a result of use of poisonous substances, such as cyanides.

31. Following the request from the Prosecutor General of Ukraine of 23 September 2016, HRMMU worked with Justice Rapid Response (JRR) to identify foreign experts to be engaged into the examination and to secure funding necessary for their work in Ukraine. This preparatory work was fully completed by October 2018. To date, the prosecution has failed to facilitate participation of identified foreign experts in forensic examination assigned to the Kyiv City Bureau of Forensic Examinations; funds that JRR secured for participation of foreign experts in the examination were not used, and have been therefore allocated for other JRR projects.

32. As of April 2019, the investigation has stalled pending the forensic examination, which, in turn, has reportedly not been finalized pending the exhumation of the bodies of six victims. Some of these victims' relatives are against the exhumation due to lack of trust in the investigation.

Prosecution of the conduct of State Emergency Service officials

33. On 16 October 2014, more than five months after the fire in the House of Trade Unions, the Main Investigation Department of the Ministry of Internal Affairs launched a criminal investigation against officials of the State Emergency Service for alleged failure of their duty to rescue people trapped in the burning House of Trade Unions that resulted in the deaths of 42 people.

34. In February 2016, police notified of suspicion the

former Deputy Head of the State Emergency Service in Odesa region, the former head of the duty shift, and the former assistant to the head of the duty shift. On 3 March 2016, the Prymorskyi

district court of Odesa placed all three suspects under house arrest.¹⁴

35. On 1 March 2016, the former Head of the State Emergency Service of Odesa region fled to Crimea, Ukraine, temporarily occupied by the Russian Federation, three days before the prosecution motioned the court to detain him. As of April 2019, the suspect remained at large.

36. The indictment against the three State Emergency Service officials was transferred to the Prymorskyi district court of Odesa in June 2016. On 26 September 2016, the court ruled to return the indictment to the prosecution office for revision. On 25 January 2017, the prosecution sent the revised indictment back to the court. Only in September 2017 did the Prymorskyi district court of Odesa schedule a preparatory hearing. However, following the recusal of the judge due to his engagement in other 2 May violence-related trials and understaffing of the court, the case was transferred to the Kyivskyi district court of Odesa for trial.

37. On 29 October 2018, at a preparatory hearing, the Kyivskyi district court of Odesa granted the defendants' and the victims' lawyers' motions to return the indictment back to the prosecutor's office for revision yet again, as the indictment did not include all identified victims. In addition, the court underlined that during the revision of the indictment, the prosecution violated procedural rules and did not disclose the revised materials to the defendants for their review.

38. On 16 January 2019, the Odesa court of appeal overturned the decision of the Kyivskyi district court of Odesa and sent the case back to the court of first instance for consideration. As of April 2019, the trial of this case had not started. Due to the non-appearance of the prosecutor for the preparatory hearing on 15 March, the court adjourned and scheduled the next hearing some two months later, on 13 May 2019.

39. In a separate case, on 26 July 2017, the police arrested the former First Deputy Head of the State Emergency Service in Odesa region who was on the wanted list. On 8 August 2017, the Pecherskyi district court of Kyiv rejected the prosecutor's motion to remand the suspect in custody and released him. In June 2018, the criminal investigation against him was completed and the case was sent to the Prymorskyi district court of Odesa. The preparatory court hearing in the case had not started due to the failure of the court to duly notify all the victims, resulting in their non-appearance.¹⁵ The next hearing is scheduled on 21 June 2019. HRMMU notes that in other 2 May violence-related cases, the same court notified the victims via media and instructed the police to verify their place of residence, allowing the court to start the trial in these cases, barring those victims who are unwilling or unable to participate.

40. HRMMU notes the unwillingness of the courts of first instance to grant priority status to the cases against the State Emergency Service officials in the context of the 2 May violence and resolve procedural obstacles to their consideration, which has resulted in the undue delays of the trials.

¹⁴ According to article 181 of the Criminal Procedure Code of Ukraine, the aggregate duration of house arrest during pre-trial investigations may not exceed six months. After six months, the ruling concerning the application of the measure of restraint in the form of house arrest is no longer valid, and the measure of restraint is deemed void.

¹⁵ Article 314.2 (preparatory court hearing) of the Criminal Procedure Code of Ukraine requires the presence of participants in the trial at the preparatory court hearing.

Focus: police misconduct that resulted in 48 deaths on 2 May 2014 in Odesa

Where: Odesa city centre and Kulykove Pole square

Context:

Despite being aware of possible violence on 2 May 2014, the police failed to deploy sufficient police forces to prevent clashes between 'pro-federalism' and 'pro-unity' supporters in the city centre, which led to six killed and hundreds of injured. More than four hours after the start of the unrest in the city centre, police did not ensure security in Kulykove Pole square, a well-known gathering place for 'pro-federalism' supporters, in order to prevent further escalation of the unrest.

Victims: as above (40 men; 7 women; 1 boy).

3.3. Failure of senior Odesa police officials to prevent the mass disorder on 2 May 2014 that resulted in 48 deaths

41. Four former high-ranking officials of Odesa regional and city police, including the former Heads of Odesa regional police and Odesa city police are on trial on charges of abusing of authority and failing to provide assistance to persons in dangerous situation. According to the prosecution they failed their duty to prevent the mass disorder and mitigate the threats it posed, which resulted in the killing of six and violent deaths of 42 people.

Prosecution of the police misconduct during the unrest in the city centre and in Kulykove Pole square

42. On 2 May 2014, the Odesa Regional Prosecution Office launched criminal proceedings against officials from the Main Department and the Odesa City Department of the Ministry of Interior in Odesa region for their negligence during

the unrest on 2 May 2014 in Odesa that resulted in 48 deaths. On 7 May 2014, the casefiles were transferred to the Office of the Prosecutor General.

43. On 7 May 2014, a few days before being notified of suspicion in in the improper organisation and coordination of the police force and resources under his authority, which led to 48 deaths during the unrest in the city centre and in Kulykove Pole square, the then Deputy Head of the Main Department of the Ministry of Interior in Odesa region fled to Moldova., He then allegedly found refuge in the Russian Federation. On 15 May 2014, he was placed on a wanted list.

44. On 24 December 2014, the Office of the Prosecutor General launched a criminal investigation against the former Head of the Main Department of the Ministry of Interior in Odesa region for breach of duty, negligence and failure of the duty to rescue during the unrest in the city centre and on Kulykove Pole square that resulted in 48 deaths. In December 2015, the investigation was completed and the casefile was sent to the Prymorskyi district court of Odesa.

45. In February 2016, the Prymorskyi district court of Odesa began consideration of the case. There were numerous procedural shortcomings in the indictment – in particular not all victims were mentioned and the legal qualification of the alleged crimes was not clearly defined. As a result, on 6 June 2016, the court ruled to return the indictment to the prosecution for revision. On 12 July 2016, the Court of Appeal of Odesa region annulled this decision and returned the case for consideration to the Prymorskyi district court of Odesa.

46. When on 6 March 2017, the Prymorskyi district court of Odesa resumed the consideration of the case, a motion for the judge's recusal served by the victims' lawyer was granted and, as a result, the trial was forced to start again.

47. HRMMU is concerned about the undue delays in the consideration of the case. Following the judicial reform that started back in 2016, courts of first instance and courts of appeal have faced substantial shortages of judges.¹⁶ As a result, courts schedule hearings once a month or less frequently, including in high profile cases such as the 2 May violence-related trials. In addition, on 13 February 2019, the Prymorskyi district court of Odesa had to postpone a hearing after the newly appointed prosecutor asked for additional time to examine the casefile. As of April 2019, the trial is still ongoing¹⁷.

48. On 29 May 2018, the Office of the Prosecutor General sent the indictment to the Prymorskyi district court of Odesa citing the former Head of Odesa City Police, the former Commander of Police Patrol Regiment and the former Head of Public Security Department as

¹⁶ See OHCHR report on the human rights situation in Ukraine, 16 November 2018 to 15 March 2019, para. 67.

¹⁷ As of April 2019, the Court is considering the first out 50 volumes of written evidence.

responsible for failure to ensure the security of citizens which led to the deaths of 48 people, injuries to 197 people and material damages. Two of the accused were additionally charged with the failure of their duty to rescue. As of April 2019, the Prymorskyi district court of Odesa had yet to complete the preparatory stage of the trial, due to procedural issues, i.e., trying to unite these proceedings with the criminal case on the events of 4 May 2014,¹⁸ and the failure of the victims to appear. The next preparatory hearing is scheduled on 3 June 2019.

49. In line with findings in other 2 May related cases, HRMMU notes a failure of the court of first instance to ensure the timely consideration of the cases against the accused Odesa police officials, ostensibly due to procedural impediments and lack of judges. Court hearings in these cases are only held once every one to two months, discouraging victims and undermining their willingness to participate in these trials.

IV. CONCLUSIONS AND RECOMMENDATIONS

50. Five years after the events of 2 May 2014 in Odesa, HRMMU notes that no one has been held responsible for the acts that led to the killings and violent deaths of 48 people and injuries to an estimated 247 people. HRMMU is concerned that the challenges described pose a serious impediment to the provision of access to justice for victims and their families. Accountability for crimes and access to justice for all is essential to establish public trust in the judiciary and the rule of law, and may serve as a bedrock for reconciliation and social cohesion.

51. Recommendations to the Government of Ukraine:

Office of the Prosecutor General

- a. Ensure effective, prompt, thorough and impartial investigations into the acts of killing and violent deaths perpetrated during the 2 May 2014 violence in Odesa and consider the possibility of transferring the lead investigative role from the Odesa Regional Police Department to the Main Investigation Unit of the National Police.

National Police

- b. Investigate effectively, promptly, thoroughly and impartially all acts of killing and violent deaths perpetrated during the 2 May 2014 violence in Odesa;
- c. Consider deploying senior investigators with relevant experience to the investigative team in charge of investigations;
- d. Ensure public order and provide security to all parties involved in the trials related to the 2 May 2014 violence in Odesa so that the cases of killings and violent deaths perpetrated in this context can be considered promptly, independently and impartially.

Presidents of courts of first instance

- e. Grant priority status to the trials in the cases of killings and violent deaths perpetrated in the context of the 2 May 2014 violence in Odesa to ensure consideration of the cases without undue delay.

High Council of Justice, High Qualification Commission of Judges of Ukraine, President of Ukraine

- f. Ensure qualification re-assessment of existing judges and recruitment of new judges without undue delay.

52. Recommendations to the international community, including to the Russian Federation:

- a. Ensure that extradition requests for all absconded suspects in criminal cases related to the

¹⁸ In both criminal proceedings: the trial No. 522/20502/14-k regarding the events of 4 May 2014 and the trial No. 522/9427/18 regarding the events of 2 May 2014, one of the defendants is the former head of Odesa City Police.

- 2 May violence in Odesa are processed in a timely manner;
- b. Consider providing international legal assistance in investigations conducted by Ukrainian authorities against individuals in relation to 2 May 2014 violence, if the requests of their extradition cannot be processed.