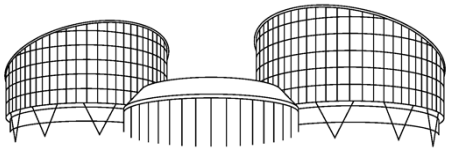

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF VYACHESLAVOVA AND OTHERS v. UKRAINE

(Applications nos. 39553/16 and 6 others –
see appended list)

JUDGMENT

Article 19 • Ensure observance of engagements • Mass disorder in Odesa in May 2014 and a fire in the Trade Union Building resulting in loss of life and injuries • Court's role limited to the examination of the Respondent State's international responsibility albeit some wrongdoings being attributable to its former local officials who fled Ukraine to the Russian Federation • Consideration given to general context, in particular, the Russian Federation's established involvement in the events in Crimea and the east of Ukraine

Art 2 (substantive) • Positive obligations • Life • Death of some of the applicants' relatives from firearm injuries during street clashes or the fire and injuries of some of the applicants from that fire • Respondent State's failure to do everything that could be reasonably expected of it to prevent, and then stop, the violence • Real and immediate risk to life • Negligence attributable to State officials and authorities went beyond an error of judgment or carelessness of individuals involved • Police's passivity rendered them partly responsible for violence resulting in the loss of lives • Failure to ensure timely rescue measures for persons trapped in the fire

Art 2 (procedural) • Positive obligations • Domestic authorities' failure to institute and carry out an effective investigation into the events • Investigation neither promptly opened nor pursued with reasonable expedition • Prohibitive delays, significant periods of unexplained inactivity and stagnation • Resulting expiry of the applicable limitation period stripped continuing investigations of any possible usefulness and thus of any potential effectiveness • Lack of independence • Failure to ensure sufficient involvement of the victims and public scrutiny • Allegation of lack of impartiality not substantiated

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Art 8 • Private and family life • Inability of one of the applicants to recover her father's body for burial for at least four months • Retention of the body by the authorities devoid of any legitimate aim

STRASBOURG

13 March 2025

In the case of Vyacheslavova and Others v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mattias Guyomar*, President*,
María Elósegui,
Stéphanie Mourou-Vikström,
Gilberto Felici,
Andreas Zünd,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the seven applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by twenty-eight individuals ("the applicants"), whose personal information and other details are set out in Appendix I to this judgment;

the decision to give notice of the applications to the Ukrainian Government ("the Government") and the decision to request further observations from the parties, pursuant to Rule 54 § 2 (c) of the Rules of Court, in application no. 59339/17;

the parties' observations;

Having deliberated in private on 11 February 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applications concern the mass disorder and fire in Odesa[1] on 2 May 2014, which involved heavy casualties. The applicants are the next of kin of some of those who lost their lives, as well as three survivors of the fire (see the table in Appendix I to this judgment). They complained under Article 2 of the Convention that the State had failed to protect their lives or those of their relatives and that there had been no effective domestic investigation into the matter. Ms Vyacheslavova (application no. 39553/16) also complained, under Article 8 of the Convention, about the delay in handing over her father's body for burial.

[1] Transliteration from Ukrainian. In certain documents referred to by the Court (see, for example, paragraph 254 below), the name of the city was transliterated from Russian ("Odessa").

THE FACTS

2. Ms Vyacheslavova (application no. 39553/16), who had been granted legal aid, was represented by Mr M. Tarakhkalo, Ms O. Chilutyan and Ms Y. Lisova, lawyers from the Ukrainian Helsinki Human Rights Union based in Kyiv. Ms Berezovska (application no. 52632/16) and Ms Olena Brygar (application no. 53467/16) were represented by Mr A. Popov, a lawyer practising in Kyiv. The remaining applicants (applications nos. 59339/17, 59531/17, 76896/17 and 47092/18) were represented by Mr E. Wesselink of the Stichting Justice Initiative, a non-governmental organisation based in Utrecht, the Netherlands.

3. The Government were represented by their Agent, Ms M. Sokorenko.

4. The facts of the case may be summarised as follows.

I. BACKGROUND

A. General context

5. In late November 2013 a wave of mass protests began, first in Kyiv and then throughout the country, in response to the then Ukrainian government's decision to suspend preparations for signing an Association Agreement with the European Union and instead strengthen economic ties with Russia. The protests, which became commonly referred to as "Maidan"[2], were marked by violent clashes between protesters and the police, with the involvement of hundreds of so-called "titushky" (*mimyuiku*), private individuals reported to have carried out numerous assaults, kidnappings and murders of protesters with the authorisation, support or acquiescence of State officials (see *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, §§ 10-11 and 14-15, 21 January 2021).

6. The Maidan protests culminated on 22 February 2014, when President Yanukovych left for the Russian Federation and was removed from office by the Ukrainian Parliament for failing to perform his constitutional duties (ibid., § 9).

7. A series of changes in Ukraine's political system then took place, including the formation of a new interim government, followed by the replacement of the leadership of, in particular, the Security Service of Ukraine ("the SSU"[3]) and the Prosecutor General's Office ("the PGO"), as well as the heads of regional State administrations.

8. In late February 2014 the Russian Federation, which by that time had considerably increased its military presence in Crimea, started to exercise

[2] After the name of the central square in Kyiv, where they started: "Maidan Nezalezhnosti", which in Ukrainian means "Independence Square".

[3] While this and all other abbreviations are explained in the text, for ease of reference they are also listed in alphabetical order in Appendix II to this judgment.

effective control over the peninsula through the active involvement of its military personnel in the following events. Unidentified armed men in green military uniforms without insignia took over strategic infrastructure and the building of the Supreme Council of the Autonomous Republic of Crimea. At gunpoint, the Supreme Council dismissed the government of Crimea, appointed a new "Prime Minister" and decided to hold a "referendum" on the future status of Crimea. That "referendum" took place on 16 March 2014 and, according to the published results, there was overwhelming support for Crimea's integration into the Russian Federation. On 18 March 2014 Crimea purported to join Russia on that basis. On 27 March 2014 the United Nations General Assembly underscored the invalidity of the above-mentioned "referendum"[4]. On 9 April 2014 the Parliamentary Assembly of the Council of Europe held that the "outcome of this referendum and the illegal annexation of Crimea by the Russian Federation [had] no legal effect and [were] not recognised by the Council of Europe"[5] (see *Ukraine v. Russia (*re *Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, §§ 211 and 214 and 315-35, 16 December 2020, and *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, § 46, 30 November 2022).

9. In early March 2014 pro-Russian protests began across eastern regions of Ukraine. In early April 2014 they deteriorated into widespread violence. Some of the protesters formed armed groups, which started to forcibly take control of administrative buildings across the Donetsk and Lugansk Regions. They announced the creation of self-proclaimed entities known as the "Donetsk People's Republic" and the "Lugansk People's Republic". The separatist entities in question enjoyed military, economic and political support from the Russian Federation (see *Ukraine and the Netherlands v. Russia*, cited above, §§ 611-21, 628-39, 649-54, 670-75 and 684-97).

B. Background events in Odesa

10. Like in Kyiv, starting from late November 2013, the Maidan protests also took place in Odesa. They were dispersed by the police, reportedly with the involvement of "titushky" (see paragraph 5 above).

11. On 19 February 2014 a group of Maidan supporters gathered near the Odesa Regional State Administration building. According to numerous media reports, they, along with journalists present at the event were attacked by at least a hundred people dressed in similar civilian clothes, wearing helmets and masks, and armed with baseball bats. The law-enforcement authorities did not intervene.

12. Tensions in the city considerably increased thereafter.

[4] Resolution no. 68/262 on the territorial integrity of Ukraine (A/RES/68/262).
[5] Resolution 1988(2014) on recent developments in Ukraine: threats to the functioning of democratic institutions.

13. As observed, in particular, by the non-governmental organisation (NGO) 2 May Group[6], on 21 February 2014 Maidan activists announced the creation of the "self-defence of the Odesa Euromaidan" to ensure the safety of pro-Maidan and Euro-integration supporters' public events.

14. On 23 February 2014 anti-Maidan activists made a similar announcement. They called for volunteers willing to undergo special training and subsequently patrol the city.

15. On 1 March 2014 a pro-Russian rally with some seven thousand participants took place in Odesa. Subsequently, pro-Russian activists set up a tent camp at Kulykove Pole Square accommodating about two hundred people. It appears that the regional police, notably, its then Deputy Head *(заступник начальника ГУ МВС України в Одеській області)* Mr Fuchedzhy[7] manifested various support to the Kulykove Pole movement[8].

16. As seen in publicly available video footage of the tent camp at Kulykove Pole and various events organised by its activists, supporters of the movement often displayed Russian and former Soviet Union flags and chanted or displayed slogans denouncing the new government as a "fascist junta" and calling for a referendum and federalisation of Ukraine into semi-autonomous regions. Some people were seen holding placards expressing hope for a repeat of the Crimean scenario in Odesa and calling for the Russian Federation to embrace their city. Popular songs about the "Great Patriotic War" (the term used for the Second World War in the Soviet Union) containing calls to fight fascism were broadcast over loudspeakers. A large screen was installed at Kulykove Pole, showing programmes from Russian State-run news channels.

17. While an idea of creation of the so-called "Odesa People's Republic" and "Novorossia" started circulating at some point on the internet, the Kulykove Pole activists apparently publicly denied their involvement.

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[6] A non-governmental organisation created after the tragic events in Odesa of 2 May 2014 by several Odesa activists representing a range of political views (including journalists and experts in ballistics, chemistry and toxicology, some of whom had also been eyewitnesses to the events). It carried out its own inquiry in parallel with the official investigations. As stated by the International Advisory Panel ("the IAP") in its 2015 report (see paragraphs 255-270 below), the 2 May Group had carried out detailed work capable of providing a further invaluable source of information for those responsible for the investigations.

[7] Having regard to the fact that this name and all the other names referred to in this judgment are already known to the public as a result of the extensive media coverage of the events in question, the Court considers it appropriate to reference the full surnames of the relevant individuals rather than use their initials.

[8] As established in the judgment of Prymorskyy Court of 18 April 2023 (see paragraph 161 below). Furthermore, Mr Dmitriyev (application no. 59339/17) submitted to the Court a copy of his statement made to a Russian legal organisation in an unknown context on 29 March 2015 in which he asserted, in particular, that Mr Fuchedzhy had sympathised with the movement, for example by informing its leaders in advance of future searches and enquiring about a convenient time for them.

18. On 2 March 2014 a pro-unity rally took place in Odesa, with seven to ten thousand participants, according to media reports. The participants called for preserving a united Ukraine. They mainly protested against the Russian military presence in Crimea (see paragraph 8 above) and emphasised that they would not tolerate a similar scenario in Odesa.

19. On 3 March 2014, while the Odesa Regional Council was holding an extraordinary session devoted to the situation in the region and Ukraine as a whole, pro-Russian protesters stormed the building and tried, without success, to force the Council to adopt decisions in favour of federalisation and a local referendum. They also took down the Ukrainian flag from the flagpole and raised a Russian flag in its place. Serious clashes with pro-unity activists, who had also arrived at the scene, were avoided owing to a police cordon between the two sides.

20. As reported in the mass media, on 17 March 2014 the law-enforcement authorities arrested one of the leaders of the pro-Russian protesters in connection with the incident of 3 March 2014.

21. Subsequently, during March and April 2014, both Maidan and anti-Maidan rallies took place in Odesa on a weekly basis without any major incidents.

22. In early April 2014 an operational headquarters was established within the Odesa Regional Police Department to ensure coordination of operational measures at the regional level in response to national security challenges and threats. A special working group was established to carry out regular monitoring of social media[9].

23. Furthermore, on 17 April 2014 the Head of the Odesa Regional Police Department *(начальник ГУ МВС України в Одеській області)*, Mr Lutsyuk, issued an order entitled "On organisational and practical measures to prevent the aggravation of the socio-political and criminal situation in the region". The case file before the Court does not contain a copy of that order. According to its summary in the bill of indictment of 4 June 2021 in case no. 0363 (see paragraph 174 below), the heads of all police structural units were to immediately organise various "organisational and preventive measures aimed at: detecting any armed formations and criminal groups and organisations, including extremist, separatist and other radical ones; identifying their leaders and participants; documenting and putting an end to their illegal activities; dismantling their financial infrastructure; searching for and seizing any illegally circulating weapons and means of restraint; [and] preventing any provocations and breaches of order during public events in the region".

24. At some point in late April 2014 fans of the Odesa Chornomorets and Kharkiv Metalist football clubs announced their intention to hold a joint rally

[9] As indicated, in particular, in the bill of indictment of 4 June 2021 in case no. 0363 (see paragraph 174 below).

in the form of a march "For a United Ukraine", together with Maidan activists and anybody wishing to join them, on 2 May 2014 in Odesa. The rally was to start at 3 p.m. at Soborna Square, after which its participants were to walk by Derybasivska Street to the football stadium (about 2.5 km east of the departure point)[10], before the beginning of the football match scheduled for 5 p.m. that day. It appears that the Odesa Regional State Administration was notified of the plan[11].

25. The announcement triggered negative reactions from some organisations and individuals with anti-Maidan views. Posts appeared on social media describing the planned rally as a Nazi march and calling for people to gather to prevent it from taking place[12].

26. On 28 April 2014 the SSU local office obtained intelligence indicating a risk of possible incitement to violence, clashes and disorder during the football fans' rally scheduled for 2 May 2014[13]. On the same day an inter-agency meeting was held between the heads of the local offices of the SSU and the Ministry of the Interior ("the MoI"), the PGO and the head of the Odesa Regional State Administration, during which the intelligence was shared. On 30 April 2014 the Odesa regional office of the SSU sent a letter to Mr Lutsyuk, the Head of the Odesa Regional Police Department (see paragraph 23 above), informing him of the above.

27. According to the case-file materials in the Court's possession[14], on 29 April 2014 the then Deputy Head of the Odesa Regional Police Department Mr Fuchedzhy (see paragraph 15 above), approved a "Plan of organisational and practical measures by [the regional police] to ensure public order" in relation to the football match scheduled for 2 May 2014. The document in question was a standard contingency plan for such a sporting event and provided for the deployment of a total of 594 policemen.

28. The case file before the Court also contains a "Plan to ensure public order and traffic safety during the football match [in question]", approved by Mr Lutsyuk on 30 April 2014[15]. That document, too, appeared to be a standard contingency plan for a football match. It provided for involvement of about 800 policemen in total, to be deployed mainly in the stadium and

[10] Kulykove Pole, where the anti-Maidan tent camp was located, is about 3 km south of both Soborna Square and the stadium.

[11] As indicated, in particular, in the bill of indictment of 25 May 2018 in case no. 1165 (see paragraph 170 below).

[12] According to the information provided by the 2 May Group.

[13] As established, in particular, by the Parliamentary Temporary Investigation Commission (see paragraphs 249-250 below).

[14] In particular, the judgment of the Prymorskyy Court of 18 April 2023 (see paragraph 161 below).

[15] According to the bill of indictment of 4 June 2021 in case no. 0363 (see paragraph 174 below), the 30 April 2014 contingency plan was approved on the basis of the plan of 29 April 2014.

the surrounding areas, and did not mention anything about the planned pro-unity rally.

29. On 30 April 2014 the Public Relations Unit of the MoI Main Department informed the operational headquarters of that Department that it had become aware of some plans by "sabotage groups" to destabilise the situation in the Odesa Region during the upcoming May holidays. At around the same time, the Cybercrime Unit of the MoI Main Department alerted the chief of the Police Headquarters, the Organised Crime Department, the Criminal Investigation Department and the Public Security Unit about social media publications that had appeared at some anti-Maidan activists' pages suggesting the possibility of mass riots in Odesa on 2 May 2014[16]. It is not known whether there was any follow-up to that information.

II. EVENTS ON 2 MAY 2014

A. Introductory remarks

30. A detailed chronology of the events in Odesa on 2 May 2014 was established by the domestic investigation authorities[17] and by the "2 MayGroup" NGO[18]. Furthermore, those events were summarised in the report of the Office of the United Nations High Commissioner for Human Rights ("the OHCHR") on the human rights situation in Ukraine of 15 June 2014, with the reference to the first-hand information from the United Nations Human Rights Monitoring Mission in Ukraine ("the UN Monitoring Mission"), whose staff members had witnessed the situation with their own eyes (see paragraphs 271-279 below). Also, a detailed summary was provided, on the basis of a variety of sources, by the IAP in its report of 4 November 2015 (see paragraphs 255-270 below).

31. The Government and Ms Vyacheslavova (application no. 39553/16) provided the Court with a summary of the 2 May 2014 events, relying on the information available to them, which was consistent with that in the aforementioned sources. The remaining applicants, including the survivors who had directly participated in the events (Mr Didenko, Mr Dmitriyev and Mr Gerasymov – application no. 59339/17), neither provided their factual summaries nor contested the accuracy of the reports in question. Ms Berezovska (application no. 52632/16) submitted, in particular, that, as a layperson with no access to official documents or power to conduct an independent investigation into the events in question, she was not in a position to confirm or refute the Government's version of the facts. She

[16] This information is known from the bill of indictment of 4 June 2021 in case no. 0363 (see paragraph 174 below).
[17] As specified in the relevant references later in the text.
[18] See footnote 6 above.

therefore invited the Court to take into consideration all the information available from the various public sources.

32. The Court will base its summary of the facts below on the parties' submissions, the documents of relevance in the case file before it, all the sources cited above, the pertinent information from the publicly accessible Unified State register of judicial decisions *(Єдиний державний реєстр судових рішень)* and the extensive publicly available photographic and video footage.

33. The Court also considers it important to note the following. Among the relatives of the applicants in the present cases, who lost their lives on that day, there were Maidan supporters and opponents, and, possibly, simple passers-by. The applicants often preferred not to mention their relatives' political views. The Court respects their choice and will only indicate the political views of the individuals concerned where that is essential for establishing and understanding the events or where, in any event, the applicants themselves made that information public. The same applies to the three applicants who were personally involved in the events under examination, namely Mr Didenko, Mr Dmitriyev and Mr Gerasymov (application no. 59339/17).

B. Events prior to the clashes

34. In the morning a patrol service regiment of 133 officers, organised into five companies, was deployed to several different locations in the city centre[19].

35. At 12 noon the then Deputy Prosecutor General held a meeting with local prosecutors, law enforcement and military officers at the Odesa Regional Prosecutor's Office to discuss public order challenges in the region. According to the information published on the MoI's website, the meeting lasted until 4 p.m. with the participants' telephones being switched off. However, according to the findings by the Parliamentary Temporary Investigation Commission (see paragraphs 249-250 below), the meeting had ended by 2.50 p.m. and certain officers had been contacted from outside during the meeting.

36. From 1 p.m. twenty policemen were deployed to Soborna Square, the place of gathering of pro-unity protesters (see paragraph 24 above). In addition, a ten-strong Public Security Unit of the City Police Department, headed by Mr Tashmatov *(начальник відділу громадської безпеки ОМУ ГУ МВС України в Одеській області)*, was deployed to the city centre area nearby.

[19] As indicated, in particular, in the bills of indictment of 25 May 2018 in case no. 1165 and of 4 June 2021 in case no. 0363 (see paragraphs 170 and 174 below).

37. At around 1.30 p.m., anti-Maidan protesters started to gather on Oleksandrviskyy Avenue, about 450 metres from the meeting point of the pro-unity activists. Many of them had their faces covered with balaclavas or scarves and were wearing helmets or masks. They carried shields, axes, or wooden or metal sticks. Some had firearms[20]. When Mr Tashmatov asked the anti-Maidan protesters why they were gathering, they replied that they were there to prevent pro-unity activists and football fans from trying to destroy the tent camp at Kulykove Pole[21]. He subsequently informed thereabout Mr Netrebskyy, the Head of the Odesa City Police Department *(начальник ОМУ ГУ МВС України в Одеській області)*.

38. At 2 p.m. Mr Vdovychenko, the Deputy Head of the Odesa City Police Department (*заступник начальника ОМУ ГУМС України в Одеській області*), who was at the football stadium, held a briefing for his subordinates. It appears from the available case-file materials[22] that 225 to 250 policemen were involved in ensuring order in and around the stadium.

39. At one point, Mr Netrebskyy instructed his deputy to deploy as many policemen as possible from the stadium to the city centre. As a result, Mr Vdovychenko sent 120 policemen. However, they had no protective equipment. Some of them also had no means of restraint[23].

40. At around 3 p.m. about thirty pro-Russian activists tried to break into the headquarters of a local pro-unity NGO in the city centre. Some pro-unity activists blocked their access at the entrance. The pro-Russian supporters damaged a car parked nearby while reportedly searching for weapons, but did not find any.

41. Following a telephone call to the police about the events described above, one of the companies of the patrol service regiment (see paragraph 34 above), consisting of thirty officers, was deployed to the scene[24]. They set up a cordon near the entrance to the building without taking any further action.

42. At around the same time, Mr Fuchedzhy (see paragraphs 15 and 27 above), together with Mr Knyshov, the commander of the patrol service regiment *(командир полку патрульної служби ОМУ ГУ МВС України в Одеській області)* (see paragraph 34 above), arrived in the city centre, at the place where the pro-Russian activists were gathering. By that time, their number had grown to about 300 people.

43. At around 3.15 p.m. the anti-Maidan activists started moving in the direction of the pro-unity march. They were accompanied by thirty

[20] As noted, in particular, in the OHCHR report on the human rights situation in Ukraine of 15 June 2014.

[21] As indicated by the 2 May Group in its chronology of events.

[22] Notably, the bills of indictment of 25 May 2018 in case no. 1165 and of 4 June 2021 in case no. 0363 (see paragraphs 170 and 174 below).

[23] As indicated in the bill of indictment of 4 June 2021 in case no. 0363 (see paragraph 174 below).

[24] As indicated, in particular, in the bill of indictment of 25 May 2018 in case no. 1165 (see paragraph 170 below).

officers of the patrol service regiment company (see paragraph 41 above) and ten policemen of the city police (see paragraph 36 above). Furthermore, Mr Fuchedzhy and Mr Knyshov walked at the head of the column, alongside the activists' leaders.

44. The number of pro-unity protesters at Soborna Square had grown, according to various data, to about 1,000[25] to 2,000[26] persons by then. Some of them, notably, members of the Maidan self-defence units (see paragraph 13 above), were wearing helmets, shields and masks and carrying axes or wooden or metal sticks. Some were seen carrying firearms.

C. Clashes in the city centre

45. At around 3.30 p.m. the clashes started. According to all the sources available to the Court (see paragraphs 30-32 above), anti-Maidan activists approached and attacked the pro-unity supporters after those had just started their march along the planned route (that is, eastwards, in the direction of the stadium and without manifesting any attempt to move towards the south, in the direction of Kulykove Pole (see paragraph 24 above)). The 2 May Group observed some pro-Russian activists open fire in the direction of pro-unity protesters using short-barrelled weapons. Both sides used pyrotechnic devices and airguns, and threw stones, stun grenades and Molotov cocktails.

46. The only applicant directly involved in the clashes was Mr Didenko (application no. 59339/17). As the Court has already noted (see paragraph 31 above), he did not provide any first-hand information as to what he had seen and experienced. Nor did he comment on or challenge the version of events before the Court (ibid.). That said, the Court takes note of the following document submitted by Mr Didenko.

47. The case file contains a "witness statement" by Mr Didenko dated 10 July 2015, which he gave to a Russian advocate in an unknown context. Mr Didenko, who described himself as an anti-Maidan activist, stated that he had actively participated in the clashes in the Odesa city centre. According to him, anti-Maidan activists had feared that pro-unity protesters would destroy the tent camp at Kulykove Pole and had therefore approached the pro-unity march. He submitted, without providing further details, that the law-enforcement officers present in the city centre at the time had appeared to favour the pro-unity supporters. Mr Didenko noted that the first shots had been fired in the direction of the pro-unity march, in his view – by some law-enforcement officials, which had provoked the clashes.

48. By 3.50 p.m. law-enforcement officers had formed a cordon separating the two sides, with their backs turned on the pro-Russian activists.

[25] According to the information provided by the 2 May Group.
[26] According to the information provided by the HRMMU (see paragraph 279 below).

The latter tried to build barricades using rubbish bins. As pointed out by the 2 May Group, with reference to publicly available photographic and video footage, some police officers and certain anti-Maidan protesters were wearing similar red adhesive tape on their arms.

49. At 4.10 p.m. the first victim, Mr Ivanov, a pro-unity activist, sustained a firearm injury to the abdomen (application no. 59531/17). He was taken to hospital by an ambulance but died during surgery[27].

50. As can be seen from publicly available video footage, at around the same time a pro-Russian activist wearing a balaclava, who was standing behind and, at times, next to the police, was seen firing numerous shots in the direction of pro-unity supporters. The police did not respond.

51. According to an assessment by the 2 May Group's ballistics expert[28], the pro-Russian activist in question, identified by that NGO as Mr Budko[29], fired live ammunition from a Kalashnikov-type assault rifle (AKS-74U). The expert considered that Mr Ivanov's fatal injuries had been inflicted by the same type of weapon. The expert also referred to video footage circulating on the internet, according to which cartridge cases of this type had been found at the scene of the clashes.

52. The Government also stated in their summary of the facts that "Mr B." had fired several shots in the direction of Maidan supporters from what appeared to be an AKS-74U assault rifle (see paragraphs 139 and 177 below).

53. Another publicly available video showed that, at one point[30], Mr Fuchedzhy, who had sustained a minor injury to his arm, had boarded an ambulance in which Mr Budko, apparently uninjured, was sitting. A few seconds later, a seriously injured police officer, assisted by two other officers, was apparently refused access to the ambulance, which then drove off.

54. According to the chronology of events provided by the 2 May Group, between 4.21 p.m. and 4.24 p.m. anti-Maidan activists broke the police cordon and drove back their opponents by using firearms and throwing Molotov cocktails. It was at that point that Mr Biryukov (application no. 59531/17) was fatally injured.

55. At around 4.30 p.m. a fire engine, which had been sent in response to an emergency call (which eventually proved to be without basis[31]) was hijacked by some pro-unity supporters who then used it to batter down barricades. It was released a few hours later following negotiations between

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[27] As stated in the death certificate, Mr Ivanov died at 5.25 p.m.

[28] On 7 October 2015 the 2 May Group posted a detailed interview with its ballistics expert on YouTube. The video contained the relevant photographic and video evidence and the expert's assessment of it.

[29] The 2 May Group also indicated in its report setting out the chronology of events that Mr Budko had been seen arriving in the city centre at 4 p.m. and specified the vehicle's licence plate.

[30] At 5.55 p.m., according to the 2 May Group's analysis.

[31] Contrary to what was claimed in the emergency call, no fire was discovered at the place indicated.

the protesters and the management of the State Emergency Service ("the SES")[32].

56. The clashes continued. At around 5.45 p.m. numerous shots were fired in the direction of anti-Maidan activists and the police cordon in front of them, apparently from a hunting gun, by someone standing on a nearby balcony. A video filmed by a person standing behind the shooter was later posted on the internet. Some people claimed to identify the shooter as Mr Khodiyak, a pro-unity activist (see also paragraphs 110-120 below).

57. It was around that time that Mr Zhulkov, Mr Yavorskyy and Mr Petrov (application no. 76896/17) sustained fatal firearm injuries.

58. At a certain point, the pro-unity protesters gained the upper hand in the clashes.

59. At around 6.30 p.m. some pro-Russian activists took refuge in a shopping centre, which had been closed for the day. They were subsequently[33] removed by the special police forces, who had arrived at the scene. Forty-seven people were placed in detention.

60. At around 6.50 p.m. an angry crowd of Maidan activists and sympathisers ran to the pro-Russian protesters' tent camp at Kulykove Pole shouting loud their resolve to destroy it.

61. The clashes in the city centre claimed six lives, including five relatives of nine of the applicants (see Appendix I for details).

D. Fire in the Trade Union Building

62. The anti-Maidan protesters at Kulykove Pole, aware of the situation evolving in the city centre, decided to take refuge in the Trade Union Building, a five-storey building facing the square. At around 6.50 p.m. they broke down the door and took inside various materials, including boxes containing Molotov cocktails and the products needed to make them. The pro-Russian protesters also took inside a fuel-powered electric generator that they had been using at the tent camp. With wooden pallets which had been used to support tents in the square, as well as various pieces of wooden and plastic furniture that they had been able to find inside the building, they blocked the entrances from the inside and erected barricades.

63. At around 7.20 p.m. Maidan activists reached Kulykove Pole and started setting fire to the tents and destroying the belongings inside. As can be seen from various publicly available video footage, a group of pro-Russian protesters on the roof of the Trade Union Building threw Molotov cocktails at the crowd beneath. Pro-unity activists also started throwing Molotov cocktails in the direction of the building. Gunshots were reportedly heard from both sides. According to the 2 May Group, the anti-Maidan protesters

[32] The SES internal inquiry report of 3 June 2014 (see paragraph 182 below) indicated that the fire engine had returned to its permanent station at 7.20 p.m.

[33] At around 7 p.m.

barricaded inside the Trade Union Building could be seen shooting in the direction of the crowd from the roof and from several windows on the first and second floors. The 2 May Group also referred to publicly available video footage showing a pro-unity activist, later identified as Mr Volkov (see paragraphs 121-124 below), firing a pistol in the direction of a window of the Trade Union Building from which an explosive device had been thrown.

64. At 7.31 p.m. the first telephone call was made to the SES dispatch centre for the fire brigade, which was 650 metres away. Numerous similar telephone calls followed, including one from the staff of the UN Monitoring Mission, at 7.43 p.m., but no fire engines were sent. An audio recording, purportedly of the calls to the dispatch centre was later posted on the internet. In the recording, the dispatcher can be heard telling the callers that there was no risk in burning tents in an open space, and then hanging up. At one point, she asked her superior whether she should continue responding this way and was instructed to do so.

65. At 7.32 p.m. the Head of the SES Main Department in the Odesa Region *(начальник ГУ ДСНС України в Одеській області)*, Mr Bodelan, who had arrived at Kulykove Pole a minute earlier in his official capacity[34], instructed the SES staff by telephone not to send any fire engines there without his explicit order[35]. Mr Bodelan eventually explained in the course of the internal inquiry (see paragraph 182 below) that he had taken that decision "having regard to the hijacking of a fire engine a few hours earlier and to prevent any similar hijacking, as well as to prevent risks to firefighters' lives".

66. At 7.45 p.m. a fire broke out in the Trade Union Building. The people trapped inside reached for the fire equipment, but the fire extinguishers were apparently out of service. The SES dispatch centre immediately started receiving telephone calls about the fire from eyewitnesses. Furthermore, according to the chronology of events provided by the 2 May Group, at around the same time, an official of the city police unit on duty informed the SES of the need to immediately deploy firefighters to Kulykove Pole, but that message was disregarded.

67. By 7.54 p.m. the fire had reached its peak and some of the people in the building desperately tried to escape by jumping out of the windows on the upper floors. Mr Dmitriyev (application no. 59339/17) was among them. Once he was on the ground, a pro-unity supporter was allegedly about to hit him when another pro-unity activist rescued him and took him to an ambulance[36]. A number of people fell to their deaths, including the son of

[34] He was wearing his uniform and was recognisable to the public.

[35] As indicated, in particular, in the bills of indictment in case no. 0154 (see paragraphs 190 and 191 below).

[36] While Mr Dmitriyev did not submit his account of events to the Court (see paragraph 31 above), this information was noted by him in his application for the procedural status of

Ms Radzykhovska (application no. 59339/17) and the son of Ms Nikitenko (application no. 47092/18). Video footage posted on the internet shows pro-unity protesters making makeshift ladders and platforms from the stage erected for speakers in the square and using them to rescue the people trapped in the building, who were then evacuated to safe zones. There is also video footage showing other pro-unity protesters assaulting those who had jumped or fallen from the windows.

68. At 7.55 p.m. Mr Bodelan, reportedly under pressure from the public, finally ordered his subordinates to send fire engines to Kulykove Pole[37].

69. At 8.09 p.m. the fire engines started arriving. According to statements made by the firefighter leading the unit in the course of the internal inquiry (see paragraph 182 below), their work was complicated by obstruction and threats from aggressive activists. According to the 2 May Group's submissions to the IAP, its own inquiry found no evidence of obstruction to the fire crews' access.

70. Turntable ladders were used to evacuate people from the windows.

71. At around 8.30 p.m., firefighters entered the building. At 8.50 p.m. they reported that the fire had been extinguished.

72. The police arrested sixty-three anti-Maidan activists who were still inside the building or on the roof (see also paragraph 85 below).

73. The fire in the Trade Union Building claimed forty-two lives. Fourteen of the deceased were the next of kin of sixteen of the applicants (see Appendix I for details).

74. Many people, including Mr Didenko, Mr Dmitriyev and Mr Gerasymov (application no. 59339/17), sustained burns and other injuries. Mr Didenko had third-degree burns to both upper limbs and a closed fracture of his left elbow[38]. He underwent inpatient hospital treatment until 15 May 2014. Mr Dmitriyev was hospitalised from 2 May to 12 May 2014 on account of a closed head injury, cerebral concussion and burns of the upper respiratory tract. He also suffered second-degree burns and cuts and bruises on both wrists. As for Mr Gerasymov, he remained in hospital until 22 August 2014, where he was treated for second-degree burns of the upper respiratory tract, third- to fourth-degree burns on the left thigh and both knees, as well as a closed head injury, cerebral concussion and contused lacerations to the head. In September 2014 he was classified as having the third category of disability (the mildest) on account of the knee burns.

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a victim, which he submitted to the investigator on 24 April 2015 in case no. 3700 (see paragraph 108 below).

[37] As indicated in the bills of indictment in case no. 0154 (see paragraphs 190 and 191 below).

[38] He had sustained the elbow fracture during the clashes in the city centre and the burns during the fire in the Trade Union Building.

III. EVENTS ON 4 MAY 2014

75. On 4 May 2014 a group of several hundred anti-Maidan protesters stormed the local police station where those who had been arrested at the Trade Union Building (see paragraph 72 above) were being held. Following a verbal order by Mr Fuchedzhy, the sixty-three detainees were released without any formal decision being taken.

IV. DOMESTIC INVESTIGATIONS

76. The domestic investigations, which comprised numerous interrelated sets of criminal proceedings evolving over time, can be divided into the following three groups:

1) investigations in respect of private individuals[39] (see paragraphs 100-143 below);

2) investigations in respect of the police (see paragraphs 144-181 below); and

3) investigations in respect of the SES officials (see paragraphs 182-208 below).

A. Evidence securing and handling

77. In view of the multitude of interrelated domestic proceedings and the lack of sufficient information to enable the Court to link each individual investigative measure to a specific set of proceedings, this part of the summary of the facts does not refer to specific case file numbers as registered in the Unified State register of pre-trial investigations (*Єдиний реєстр досудових розслідувань*).

1. As regards the deaths of the applicants' relatives from firearm injuries[40]

(a) Material evidence

78. It appears from the case-file materials[41] that on the evening of 2 May 2014 an investigator drew up a report about having found, in the city centre, an object appearing to be a bullet. No further information is available in that regard, apart from the fact that the report was not admitted into

[39] The reference to "private individuals" is used for practical reasons only, in order to distinguish this group of investigations from those related to the police and SES staff.

[40] The deceased in question were relatives of the following applicants: Ms Biryukova, Mr Ivanov and Ms Ivanova in application no. 59531/17 and the following applicants in application no. 76896/17: Ms Gorenko, Mr Vladyslav Yavorskyy, Mr Viktor Yavorskyy, Ms Petrova, and Ms Zhulkova.

[41] Notably, the judgment of the Illichivsk City Court dated 18 September 2017 (see paragraph 134 below).

evidence in case no. 0380 (see paragraph 134 below) on the grounds that the investigator in question was not a member of the investigation team dealing with the case.

79. Also on the evening of 2 May 2014 the police inspected the shopping centre where the pro-Russian supporters had taken refuge (see paragraph 59 above). A dozen wooden and metal sticks, as well as some plastic bottles containing combustible substances, were seized.

80. As observed by the 2 May Group, the area of the city centre where the clashes had taken place was neither secured by a police perimeter nor inspected by the police. Instead, during the night of 2 to 3 May 2014 local cleaning and maintenance services were sent there. By the morning of 3 May 2014, the area had been thoroughly cleaned.

81. On 15 May 2014 the police carried out their first on-site inspection in the areas of the city centre where the clashes had taken place. No items of relevance to the investigation were found, apart from some damaged pavements.

82. According to the information provided by the Government, without further details, the investigating authorities carried out nine additional on-site inspections in the areas in question between 2016 and 2021.

(b) Forensic evidence

83. By early June 2014 the forensic medical examinations of the bodies of the applicants' relatives killed during the clashes in the city centre (see Appendix I) had been completed. Although forensic ballistics examinations had apparently been carried out on the airgun bullet extracted from the body of Mr Biryukov and on the shrapnel extracted from the bodies of Mr Zhulkov, Mr Petrov and Mr Yavorskyy, the experts found it impossible to establish with precision from which weapons the fatal shots had been fired[42]. In the case of Mr Ivanov, it is not known whether the bullet was ever examined by a forensic ballistics expert. As stated in the report of 4 June 2014 on the forensic medical examination of the body, the bullet had been extracted during surgery, before Mr Ivanov's death, but had not been provided to the expert for examination.

(c) Photographic and video evidence

84. The Government informed the Court, without providing details, that between 2016 and 2021 "more than fifty people [had been] identified from photographs" and that "more than 300 [reports on] the inspection of photographic and video material, including that posted on the internet, [had been] compiled".

[42] This information is noted, in particular, in the report of 5 June 2014 on the forensic medical examination of Mr Biryukov's body.

2. As regards the deaths of the applicants' relatives[43] and the injuries of other applicants[44] as a result of the fire in the Trade Union Building

(a) Material evidence

85. During the night of 2 to 3 May 2014 experts of the Odesa Regional Bureau of Forensic Medical Examinations carried out an on-site examination of the bodies of those who had died as a result of jumping from the building. Early the next morning, they started examining the bodies inside the building. The examination was apparently interrupted several times, as some anti-Maidan protesters were still inside the Trade Union Building. They were evacuated by the police by 10 a.m.

86. Throughout the entire day on 3 May 2014 the investigation team and forensic medical experts continued to inspect the scene and examine the bodies in the Trade Union Building.

87. From 4 to 20 May 2014 the building was freely accessible to the public.

(b) Forensic evidence

88. At a press conference held on 19 May 2014, the Deputy Minister of the Interior stated that a complex forensic examination of the combustible materials and flammable objects in the Trade Union Building had revealed the presence of chloroform, and that the Ukrainian authorities were seeking the assistance of international experts to draw more precise conclusions.

89. By mid-June 2014 the forensic medical examinations of the bodies of those who had died as a result of the fire had been completed. The experts concluded that the relatives of Mr Negaturov, Mr Petrov and Ms Yakhlakova (application no. 59339/17) had died of burns and high temperatures, while the relatives of Ms Babushkina, Ms Lukas and Ms Pidorich (also application no. 59339/17) had died as a result of carbon monoxide poisoning[45]. As also stated in the expert reports, the deaths of the relatives of the following applicants were caused by intoxication by unidentified gases, fumes and vapours: Ms Berezovska (application no. 52632/16); Ms Olena Brygar and Ms Lyudmyla Brygar (applications nos. 53467/16 and 59339/17); Ms Kovriga and Ms Mishyna (application no. 59339/17); and Ms Marikoda and Mr Milev (application no. 47092/18).

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[43] The deceased in question were relatives of the following applicants: Ms Vyacheslavova (application no. 39553/16); Ms Berezovska (application no. 52632/16); Ms Olena Brygar (application no. 53467/16); the following applicants in application no. 59339/17: Ms Babushkina, Ms Lyudmyla Brygar, Ms Kovriga, Ms Lukas, Ms Mishyna, Mr Negaturov, Mr Petrov, Ms Pidorich, Ms Radzykhovska and Ms Yakhlakova; as well as all three applicants in application no. 47092/18: Ms Marikoda, Mr Milev and Ms Nikitenko.

[44] Namely, the following applicants in application no. 59339/17: Mr Didenko, Mr Dmitriyev and Mr Gerasymov.

[45] For the relevant facts concerning the father of Ms Vyacheslavova (application no. 39553/16), see paragraphs 209-226 below.

90. The case file before the Court does not contain copies of any forensic examination reports other than those mentioned in the previous paragraph.

91. It appears that on 7 July 2014 a report on the forensic examination in respect of the fire in the Trade Union Building was issued by the Scientific Research and Forensics Centre of the MoI Department in the Mykolayiv Region. According to its findings, as summarised in the IAP report on the basis of the authorities' related submissions, the building could have caught fire as a result of one or more individuals bringing combustible materials and a source of ignition into the building. The report identified five separate fire origin points: the lobby of the building; the left and right stairwells between the ground and first floors; a room on the first floor; and the landing between the second and third floors. The fire origin points, other than the one in the lobby, could only have resulted from actions taken by individuals inside the building.

92. As also observed in the IAP report, in April 2015 the PGO issued a press release summarising the findings of a forensic examination. It established that the fire in the Trade Union Building had started in the lobby. People died as a result of the rapid spread of the fire and the sharp rise in temperature, due to the chimney effect of the central stairwell, exacerbated by the blocking of interior doors with barricades. Almost all those who died inside the building were on or near the staircase. It was established in the course of the investigations that incendiary mixtures (Molotov cocktails) had been used by both parties to the conflict, including in the building itself. There was no evidence of pre-planned arson or of the use of potent toxic agents, including chloroform. The IAP stated in its report that the above findings appeared to be corroborated by the findings of the 2 May Group (see paragraph 252 below).

93. On 11 March 2016 an additional forensic medical examination was ordered in respect of thirty-four people who had died in the fire[46]. One of the questions put to the experts was whether the deceased's bodies contained any indication suggesting the use of poisonous gases or substances.

94. In early 2017 experts of the Kyiv City Bureau of Forensic Medical Examinations informed the investigator that the exhumation of the bodies of at least five people was required (the late husband of Ms Mishyna (application no. 59339/17) was among those mentioned)[47]. According to the prosecution authorities[48], no exhumations were carried out because the relatives objected.

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[46] This information is known from the letter of the Odesa Regional Prosecutor's Office to the Government Agent dated 20 May 2022.

[47] This information came to the Court's knowledge from the letter of the Odesa Regional Prosecutor's Office to the Government's Agent of 27 April 2023. No further details are available in that regard.

[48] ibid.

95. Although the prosecution authorities considered the possibility of involving international experts, they eventually abandoned that idea, referring to certain legal loopholes and various technical difficulties[49].

96. As indicated in a letter from the State Bureau of Investigations to the Government Agent dated 13 May 2022, a forensic engineering examination of the Trade Union Building to determine the material damage caused by the fire was still underway.

97. On 31 May 2022 the Kyiv City Bureau of Forensic Medical Examinations carried out the forensic medical examination ordered on 11 March 2016 (see paragraph 93 above) "on the basis of the available case material"[50]. It found no evidence of the use of poisonous gases or substances. No copy of that report was provided to the Court.

(c) Photographic and video evidence

98. The general statistical information provided by the Government concerning the investigative measures taken in relation to the identification of specific individuals on photographic and video material (see paragraph 84 above) is also relevant to this section.

99. Further relevant information concerning the handling of photographic and video evidence is provided below (see, in particular, paragraphs 127 and 129).

B. Investigations in respect of private individuals

1. Authorities in charge

100. Initially entrusted to the investigation unit of the Odesa Regional Police Department, on 5 May 2014 the investigation in respect of private individuals became the responsibility of the MoI Main Investigation Department.

101. On 15 January 2016 the pre-trial investigation was, however, transferred back to the investigation unit of the Odesa Regional Police Department. The respective ruling of the PGO, a copy of which was published by the 2 May Group on its website, provided the following grounds for that decision:

> "The pre-trial investigation in the case has been carried out by the MoI Main Investigation Department.
>
> As it appears from the case file, the criminal offences under investigation were committed on the territory of the city of Odesa. Accordingly, the pre-trial investigation should be carried out by the investigation unit of the Odesa Regional Police Department."

[49] ibid.
[50] ibid.

102. As confirmed by a letter from the Odesa Regional Prosecutor's Office to the Government Agent dated 20 May 2022, the Regional Police Department has remained in charge of the investigations.

2. Case no. 3700

103. On 2 May 2014 and during the following days numerous sets of criminal investigations were launched into charges of organising and participating in mass disorder with fatal or other grave consequences, murder, illegal possession of weapons, seizure of State or public buildings, and so on. While initially assigned various individual numbers in the Unified State register of pre-trial investigations, within several days they were merged into case no. 3700. Subsequently, certain episodes were severed again into separate sets of proceedings (see paragraphs 110-143 below).

104. An investigation into the events of 4 May 2014 (see paragraph 75 above) was joined to case no. 3700 in so far as it did not concern the conduct of the police[51].

105. The Government informed the Court that, in addition to the investigative measures referred to in paragraphs 82 and 84 above), the following measures had been taken in case no. 3700 between 2016 and 2021:

> "... more than 1,300 witnesses were questioned, more than 200 decisions of investigative judges on granting temporary access to things and documents were obtained, and more than 300 orders to operative units were issued. Also an analysis of data containing information on more than 3,000 people was also carried out ... more than 100 analytical studies of telephone connections were carried out ... 22 searches of persons who [might have been] involved in organisation [of] and participation in mass riots, and the conclusions of more than 250 examinations were obtained."

106. The Government further informed the Court that, in case no. 3700, among other things, the circumstances of the deaths of Mr Yavorskyy, Mr Zhulkov and Mr Petrov (application no. 76896/17) and of Mr Biryukov (application no. 59531/17) were being investigated. They stated that the pre-trial investigation was ongoing.

107. The Government did not provide any information to the Court as to the applicants involved in these proceedings in the procedural status of victims. Having regard to the Government's submissions (see paragraph 291 below), it appears that all the applicants had the procedural status of victims in case no. 3700. This concerns both the applicants whose relatives died during the clashes in the city centre and those who either got injured or lost their next of kin during the fire[52].

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[51] In so far as the police officials were concerned, the relevant investigation became a part of case no. 0186 (see paragraphs 146-156 below).

[52] For example, Ms Marikoda and Mr Milev (application no. 47092/18) confirmed that they had been granted the procedural status of victims in case no. 3700.

108. The case file before the Court contains a copy of Mr Dmitriyev's (application no. 59339/17) request to be granted the procedural status of a victim in case no. 3700, which he submitted to the investigator on 24 April 2015. On 12 May 2015 the Odesa Prymorskyy District Court ("the Prymorskyy Court") found that the investigator had committed an unlawful omission on account of his failure to examine the above-mentioned request.

109. On 14 September 2016 and 22 May 2017 the Prymorskyy Court allowed complaints lodged, in particular, by the applicants Ms Gorenko, Ms Lyudmyla Brygar, Ms Nikitenko, Ms Kovriga, Ms Pidorich, Mr Dmitriyev, and Ms Berezovska. It found that the investigator had committed an unlawful omission on account of the failure to ensure their access to the case-file materials.

3. Cases nos. 0451 and 0494

110. On 18 May 2014, within case no. 3700 (see paragraph 103 above), the police arrested a pro-unity activist, Mr Khodiyak, who had allegedly been seen firing a hunting gun in the direction of anti-Maidan protesters (see also paragraph 56 above).

111. On 8 October 2014 the investigation in respect of Mr Khodiyak was severed from case no. 3700 and was registered under no. 0451. He was suspected of killing an anti-Maidan activist[53] and attempting to kill a law-enforcement officer.

112. On 16 April 2015 the prosecutor approved a bill of indictment, but the Odesa Kyivskyy District Court ("the Kyivskyy Court"), returned it on the basis that it did not comply with the Code of Criminal Procedure. On 20 June 2018 a new bill of indictment was approved.

113. At some point the case was referred to the Odesa Malynivskyy District Court ("the Malynivskyy Court"), where it appears to be still pending.

114. On 18 July 2019 the Malynivskyy Court rejected requests by the applicants Ms Petrova, Ms Zhulkova, Ms Gorenko and Ms Yavorska (application no. 76896/17) to be admitted to the proceedings as victims.

115. On 2 August 2019 those applicants submitted a statement of a criminal offence by Mr Khodiyak to the prosecution authorities. They claimed that their children had died as a result of firearm injuries, and that Mr Khodiyak had allegedly been seen firing what appeared to be a hunting gun in the direction of anti-Maidan protesters.

116. On 17 September 2019 a relevant entry was made in the Unified State register of pre-trial investigations under no. 0494.

117. On 24 October 2019 the Kyivskyy Court allowed complaints by the applicants Ms Petrova, Ms Zhulkova and Ms Yavorska that

[53] Mr Losinskyy, whose relatives are not among the applicants in the present cases.

the investigator, who had not reacted to their requests to be admitted in the case as victims, had committed an unlawful omission on that account.

118. As known from the Unified State register of judicial decisions, the investigator discontinued the criminal investigation in case no. 0494 four times on the grounds that similar charges against Mr Khodiyak were already being examined in case no. 0451. All those rulings were quashed by the Kyivskyy Court as unlawful. Notably, in its fourth such ruling, of 13 April 2021, the Kyivskyy Court noted that all the investigator's decisions to discontinue the investigation had been identical and that they had been issued without a single investigative measure and in complete disregard of the earlier criticism expressed by that court.

119. As also indicated in the Unified State register of judicial decisions, on 13 January 2022 the Kyivskyy Court allowed the investigator's request for extension of the pre-trial investigation until 17 July 2022.

120. No further developments are known to the Court.

4. Case no. 0450

121. Within the investigation in case no. 3700 (see paragraph 103 above), on 26 May 2014 the police arrested Mr Volkov, a pro-unity activist, who had allegedly been seen firing a pistol in the direction of the Trade Union Building where anti-Maidan protesters had taken refuge (see also paragraph 63 above).

122. On 8 October 2014 the investigation in respect of Mr Volkov was severed from case no. 3700 and was assigned case no. 0450.

123. On 27 February 2015 and 28 March 2016 the investigation was discontinued because of Mr Volkov's death. However, on 21 December 2015 and 28 December 2016 the Prymorskyy Court overturned those decisions following complaints by Mr Milev (application no. 47092/18), who had the procedural status of a victim[54]. He argued that there was insufficient documentary evidence of Mr Volkov's death.

124. There is no information on any further developments in the case file before the Court.

5. Case no. 0456

125. On 14 August 2014 Mr Goncharevskyy, another Maidan activist, was arrested at his home on suspicion of having beaten with wooden sticks, together with several other persons, those who had jumped or had fallen out of the Trade Union Building in an attempt to escape from the fire (see paragraph 67 above). The notice of suspicion against him concerned the charge of participation in mass disorder with fatal consequences.

[54] It is not known whether any other applicants had the procedural status of victims in those proceedings.

The investigation was part of case no. 3700 (see paragraph 103 above) at that time.

126. On 9 February 2015 the PGO discontinued the investigation for lack of evidence of a criminal offence.

127. On 3 July 2015 the Prymorskyy Court overturned that decision as premature in allowing Mr Milev's complaint (application no. 47092/18). It observed that, although several eyewitnesses, including Ms Radzykhovska (application no. 59339/17), had pointed out Mr Goncharevskyy as one of the perpetrators, no identification parades had been carried out. Furthermore, the Prymorskyy Court observed that Ms Radzykhovska, who had the procedural status of a victim, had submitted a request to the investigator for the introduction of photographic and video evidence proving the involvement of a person strongly resembling Mr Goncharevskyy in the criminal offence in question. However, no forensic identification analysis had been carried out to establish whether or not that person was Mr Goncharevskyy. Without any assessment of the available evidence, the investigator had preferred to take the suspect's denial of guilt at face value.

128. On 28 July 2015 the PGO severed the investigation in respect of Mr Goncharevskyy from case no. 3700 and registered it under case no. 0456.

129. On 13 February 2017 the investigator ordered a forensic identification analysis of the photographic and video material submitted by Mr Milev. The expert was instructed to analyse all the videos supposedly showing Mr Goncharevskyy and to establish whether the person in question was wearing identical clothing, whether it was the same person, and whether that person was Mr Goncharevskyy. It appears that such an examination was never carried out.

130. In 2018 and 2019 the Prymorskyy Court found, on several occasions, that the investigator had committed an unlawful omission on account of having disregarded some requests from victims including Ms Babushkina, Mr Dmitriyev, Ms Lukas, Ms Radzykhovska and Ms Yakhlakova (application no. 59339/17) and Ms Marikoda, Mr Milev and Ms Nikitenko (application no. 47092/18).

131. The Court has not been informed of any subsequent developments.

6. Case no. 0380

132. On 16 September 2014 the investigation in respect of twenty-four anti-Maidan activists suspected mainly of organisation of and involvement in mass riots was severed from case no. 3700 (see paragraph 103 above) and was registered as case no. 0380.

133. On 21 March 2015 the PGO approved the bill of indictment in respect of nineteen accused (the remaining five had been declared wanted by the police and that part of the investigation had been severed from case no. 0380). The bill of indictment mentioned, without further details,

the existence of forensic ballistics reports dated 2 June, 3 September and 24 September 2014, as well as a forensic examination report dated 5 June 2014 regarding explosives. None of those reports was apparently submitted to the trial court (see paragraph 134 below). Nor is there any further information in that regard in the case file before the Court.

134. On 18 September 2017 the Illichivsk City Court ("the Illichivsk Court") acquitted all nineteen accused, referring to various procedural shortcomings in the pre-trial investigations and the absence of sufficient admissible evidence proving their guilt. It was noted, in particular, that numerous investigative measures had been carried out by investigators not part of the investigation team in charge of the case. Accordingly, the evidence collected and reports drawn up by them were deemed inadmissible. Furthermore, the court pointed out that the first on-site inspection in the relevant areas of the city centre had taken place with an inexplicable delay of almost two weeks, by which time all the evidence had been lost. It was also observed that no original photographic or video evidence had been provided to the court in spite of its numerous rulings to that effect. The court further noted that the prosecution had questioned only one police officer and not a single football fan involved in the events of 2 May 2014. It also took note of the absence in the case file of any ballistics reports in respect of the bullets and shrapnel extracted from the victims' bodies. Overall, the Illichivsk Court criticised the pre-trial investigation for being so incomplete and deficient that it had been necessary to seek alternative sources of information. It also observed that, while both Maidan and anti-Maidan activists had been involved in the mass riots, only the latter had been accused, with only one notice of suspicion having been issued in respect of a pro-unity activist.

135. It was noted in the judgment that Mr Petrov (application no. 59339/17), Ms Zhulkova, Mr Yavorskyy and Ms Gorenko (application no. 76896/17) and Ms Nikitenko (application no. 47092/18), who had the procedural status of victims[55], had submitted a written statement to the court that there was no indication of any of the accused being involved in the deaths of their children.

136. The prosecutor lodged an appeal. Its copy is not available in the case file before the Court.

137. As known from the Unified State register of judicial decisions, on 2 November 2017 the case was transferred from the Odesa Regional Court of Appeal to the Mykolayiv Regional Court of Appeal, as all the judges of the Odesa Regional Court of Appeal had already been involved, in one way or another, in the examination of the case.

138. The case is pending before the Mykolayiv Regional Court of Appeal.

[55] While the bill of indictment of 21 March 2015 had also listed Ms Ivanova and Mr Biryukov (application no. 59531/17) among the victims, they were not mentioned in the judgment of the Illichivsk Court.

7. Case no. 0613

139. According to the information provided by the Government, on 4 July 2016 a notice of suspicion was announced to Mr Budko in connection with the death of Mr Ivanov (application no. 59531/17) (see paragraphs 49-51 above). It was probably on that date that the pre-trial investigation was registered in the Unified State register of pre-trial investigations as case no. 0613.

140. No preventive measure was applied and Mr Budko went into hiding. He was declared wanted by the police.

141. On 4 October 2016 the investigation was suspended for that reason.

142. The Government submitted that "measures [were] being taken to establish his [whereabouts]".

8. Other cases

143. The Court is aware, in particular from the information available in the Unified State register of judicial decisions, that some additional sets of criminal proceedings in respect of individuals have been brought in relation to the mass disorder in Odesa on 2 May 2014. However, in the absence of any details from the parties and given that the texts in the aforementioned register are anonymised, the Court is not in a position to make use of that information. It can only observe that many of the proceedings in question were stayed at some point because the suspects had absconded.

C. Investigations in respect of the police

1. Authorities in charge

144. While the criminal investigation was initially launched by the Odesa Regional Prosecutor's Office (see paragraph 146 below), on 6 May 2014 the Deputy Prosecutor General decided to assign the case to the PGO.

145. The PGO dealt with the investigations into the police conduct until 2020. Thereafter, the newly created State Bureau of Investigations[56] took charge of them.

2. Case no. 0186

146. On 2 May 2014 the Odesa Regional Prosecutor's Office launched a criminal investigation into neglect of duty by police officials in connection with the mass disorder that had taken place that day. The case was assigned case no. 0186, without any suspects defined at that stage.

[56] The creation of the State Bureau of Investigations competent to investigate crimes committed by judges, law-enforcement officers and public officials holding particularly important positions was provided for in the 2012 Code of Criminal Procedure. The agency was created in 2016 and became operational on 27 November 2018.

147. According to the information provided by the State Bureau of Investigations to the Government Agent on 13 May 2022, the following applicants applied for and obtained the procedural status of victims in case no. 0186: Ms Vyacheslavova (application no. 39553/16); Ms Olena Brygar (application no. 53467/16); Ms Babushkina, Mr Dmitriyev, Ms Kovriga, Mr Negaturov, Mr Petrov and Ms Pidorich (application no. 59339/17); Mr Ivanov (application no. 59531/17); Ms Gorenko and Ms Zhulkova (application no. 76896/17); as well as Mr Milev and Ms Nikitenko (application no. 47092/18).

148. On 3 May 2014 Mr Lutsyuk, the Head of the Odesa Regional Police Department (see, in particular, paragraphs 23, 26 and 28 above), was dismissed from his post and Mr Fuchedzhy (see paragraphs 15 and 27 above) became the acting Head of that Department.

149. At some point after the events of 4 May 2014 (see paragraph 75 above), the charges of neglect of duty and exceeding authority or official powers by police officials in relation to the release of detainees on that day were added to case no. 0186, still with no notices of suspicion being issued in respect of anyone.

150. On 6 May 2014 Mr Fuchedzhy fled Ukraine across the border into Moldova and subsequently into Russia. On 13 May 2014 the investigator issued a notice of suspicion against him for neglect of duty in connection with the mass disorder on 2 May 2014 and for exceeding authority in relation to the release of detainees on 4 May 2014 (see, in particular, paragraphs 27, 42, 43, 53 and 75 above). On 15 May 2014 Mr Fuchedzhy was placed on a wanted list. On 17 October 2014 the criminal investigation in respect of the charges against him was severed into a separate case (see paragraphs 157-161 below).

151. On 30 April 2015 a notice of suspicion of neglect of duty was announced to Mr Lutsyuk on account of a failure to ensure public order on 2 May 2014. On an unspecified date later he was additionally notified of suspicion of forgery in office, after an internal inquiry had established, on 17 June 2015, that he had given an instruction to forge, post factum, an official record about the implementation of the "Wave" contingency plan (see paragraphs 238-244 below) in the afternoon on 2 May 2014.

152. It appears that at some point the investigator suggested to Mr Gerasymov (application no. 59339/17)[57], who had been questioned as a witness up to that point, that he should apply for the procedural status of victim. In response, on 2 July 2015 Mr Gerasymov submitted a written statement that he was waiving the procedural status of victim in case no. 0186 "because of [his] personal views".

153. On 1 September 2015 Mr Lutsyuk was placed under house arrest, and on 30 October 2015 that preventive measure was replaced by bail.

[57] And, possibly, some other individuals.

154. During a meeting with the IAP on an unspecified date before November 2015, the head of the investigation team stated that "99% of the case" against Mr Lutsyuk had been completed[58].

155. On 24 December 2015 the criminal investigation concerning the charges against Mr Lutsyuk was severed into a separate set of proceedings (see paragraphs 162-166 below).

156. At various dates later, notices of suspicion of criminal offences were announced in respect of some other police officials, and the criminal investigation in related parts was also severed from case no. 0186 (see paragraphs 167, 172, 176 and 179 below).

3. Cases nos. 1126, 1219 and 0500

157. While initially covered by case no. 0186 (see paragraphs 146-156 above), on 17 October 2014 the criminal investigation in respect of Mr Fuchedzhy was severed into a separate case, no. 1126. The number assigned to that case in the Unified State register of pre-trial investigations was changed to no. 1219 on 16 May 2016 and subsequently to no. 0500 on 14 July 2022. The charges against Mr Fuchedzhy evolved from neglect of duty to conspiracy to organise mass disorder with grave consequences, aggravated abuse of authority or official powers, aiding and abetting the seizure of public buildings, and obstructing law-enforcement officials in their duties.

158. The following applicants had the procedural status of victims in case no. 1219: Ms Vyacheslavova (application no. 39553/16); Ms Babushkina, Ms Kovriga, Mr Petrov and Mr Negaturov (application no. 59339/17); Ms Pidorich and Ms Radzykhovska (application no. 59339/17); Ms Olena Brygar (application no. 53467/16); Mr Dmitriyev (application no. 59339/17); and Ms Nikitenko (application no. 47092/18). After the case number was changed to no. 0500 in July 2022, the following applicants applied for and received the procedural status of victims: Ms Biriukova (application no. 59531/17); Mr Ivanov (application no. 59531/17); and Ms Zhulkova (application no. 76896/17).

159. In 2017 the Ukrainian prosecution authorities requested the extradition of Mr Fuchedzhy from the Russian Federation, where he had been evading justice. The Prosecutor General's Office of the Russian Federation replied that Mr Fuchedzhy was a Russian citizen and that his extradition was therefore not possible.

160. On 25 July 2022 the Prymorskyy Court ordered his pre-trial detention as a preventive measure. It also held that, under the circumstances, a trial *in absentia* was possible.

161. On 18 April 2023 the Prymorskyy Court found Mr Fuchedzhy guilty of complicity in organising mass riots with grave consequences, aggravated

[58] As indicated in the IAP report of 4 November 2015.

abuse of authority or official powers, aiding and abetting the seizure of public buildings, and obstructing law-enforcement officials in their duties. He was sentenced to fifteen years' imprisonment, banned from holding positions in law enforcement for three years, fined and stripped of his rank as colonel.

4. Case no. 2821

162. On 24 December 2015 the criminal investigation concerning Mr Lutsyuk was severed from case no. 0186 (see paragraphs 146-156 above) and registered under case no. 2821. Under the amended charges, he was suspected of abuse of authority or official powers and neglect of duty with grave consequences, as well as aggravated forgery in office.

163. The following applicants were accorded the procedural status of victims in case no. 2821: Ms Vyacheslavova (application no. 39553/16); Ms Berezovska (application no. 52632/16); Ms Olena Brygar (application no. 53467/16); Ms Babushkina, Mr Dmitriyev, Ms Kovriga, Ms Lukas, Mr Negaturov, Mr Petrov, Ms Pidorich, Ms Radzykhovska, Ms Lyudmyla Brygar and Ms Yakhlakova (application no. 59339/17); Mr Ivanov and Ms Ivanova (application no. 59531/17); Ms Gorenko, Ms Petrova and Ms Zhulkova (application no. 76896/17); and Ms Marikoda, Ms Nikitenko and Mr Milev (application no. 47092/18). Some of them[59] lodged civil claims in April 2016. It appears that the remaining applicants did not apply to be recognised as victims.

164. On 25 February 2016 the PGO approved a bill of indictment. It stated that Mr Lutsyuk was accused of failing to prepare and implement the "Wave" contingency plan, to take any measures to stop the clashes once they had started and to rescue people trapped in the Trade Union Building. Mr Lutsyuk was also accused of giving an instruction, late in the evening of 2 May 2014, to make a forged entry in a logbook that the "Wave" contingency plan had been implemented at 2 p.m. on that date.

165. On 6 June 2016 the Prymorskyy Court returned the bill of indictment to the prosecutor for non-compliance with the requirements of the Code of Criminal Procedure. On 12 July 2016 the Odesa Regional Court of Appeal quashed that ruling and remitted the case to the Prymorskyy Court.

166. The Government informed the Court that on 14 June 2024 the Prymorskyy Court had released Mr Lutsyuk from criminal liability owing to the expiry of the ten-year limitation period under Article 49 of the Criminal Code (see paragraph 228 below).

[59] Ms Lyudmyla Brygar, Mr Dmitriyev, Ms Kovriga, Ms Lukas, Ms Pidorich, Ms Gorenko, Mr Milev, Ms Nikitenko and Ms Radzykhovska.

5. Case no. 1165

167. On 15 May 2018 a notice of suspicion was announced in respect of Mr Netrebskyy, the former Head of the Odesa City Police Department, as well as Mr Tashmatov and Mr Knyshov (see, in particular, paragraphs 36-37 and 42-43 above). All three officials were suspected of aggravated abuse of authority or official powers for failing to take any measures to put an end to the violence in Odesa on 2 May 2014. Mr Knyshov and Mr Netrebskyy were additionally suspected of leaving those trapped in the fire in the Trade Union Building in danger.

168. The relevant part of the criminal investigation was severed from case no. 186 (see paragraphs 146-156 above) and registered under case no. 1165.

169. The following applicants had the procedural status of victims in those proceedings: Ms Vyacheslavova (application no. 39553/16); Ms Olena Brygar (application no. 53467/16); Ms Babushkina, Ms Kovriga, Ms Mishyna, Mr Negaturov, Ms Radzykhovska, Mr Petrov and Ms Pidorich (application no. 59339/17); Mr Ivanov (application no. 59531/17); Ms Gorenko and Ms Zhulkova (application no. 76896/17); and Mr Milev and Ms Nikitenko (application no. 47092/18).

170. On 25 May 2018 the PGO approved a bill of indictment in the case. It stated that the police officials in question could have prevented the clashes on 2 May 2014 if they had ensured a timely and adequate response to the unlawful and aggressive behaviour of the anti-Maidan activists when there had not yet been a significant number of them. It had been obvious from the outset that the gathering of anti-Maidan protesters in the city centre was unlawful, since no prior notification had been submitted to the local authorities. The aggressive intentions of those activists had also been clear. However, there had been no response from the law-enforcement authorities. It was observed in this connection that Mr Tashmatov had not even tried to stop the gathering or dissuade its participants from continuing their unlawful actions. Furthermore, Mr Netrebskyy, who had been well aware of the course of events and who had had the requisite competence and resources to ensure the speedy deployment of up to 475 policemen to the city centre, had failed to give any orders in that regard. When thirty aggressive anti-Maidan activists had tried to break into an NGO building and damaged a car, they had not faced any response from the law-enforcement authorities either. Mr Knyshov could have regrouped the patrol service regiment under his command to ensure the presence of 133 officers, who would have had no difficulty in arresting the offenders. Instead, only one company of thirty officers had been involved in a passive way, merely blocking the entrance to the building. The police forces present in the city centre had merely observed the events, without any orders to intervene. The prosecutor considered that all this had sent a message of impunity to the anti-Maidan activists. The three police officials in question were also suspected of failing to take adequate measures at a later stage, after the pro-unity protesters had announced their intention to

destroy the tent camp at Kulykove Pole. Lastly, Mr Netrebskyy and Mr Knyshov were suspected of failing to adequately respond to the fire in the Trade Union Building in terms of ensuring safety and securing evidence.

171. On 30 May 2018 the bill of indictment was sent to the Prymorskyy Court, where it remains pending.

6. Case no. 0363

172. On 14 May 2021 a notice of suspicion of neglect of duty was announced to Mr Vdovychenko (see paragraphs 38 and 39 above) and the relevant part of the investigation was severed from case no. 0186 (see paragraphs 146-156 above) and registered under case no. 0363.

173. It appears that none of the applicants had the procedural status of victims in this set of proceedings.

174. On 4 June 2021 the State Bureau of Investigations approved a bill of indictment. It stated that Mr Vdovychenko was accused, in particular, of ordering, on the afternoon of 2 May 2014, the deployment of police officers from the football stadium to the city centre without providing them with appropriate protective equipment or means of restraint (see paragraph 39 above). Furthermore, he was accused of neglect of duty for failing to order the deployment of reserve police resources from the local garrison.

175. On 7 June 2021 the bill of indictment was sent to the Prymorskyy Court, where the case remains pending.

7. Case no. 0713

176. According to the information provided by the Government, on 28 August 2021 a notice of suspicion of complicity in mass riots was issued in respect of Mr Ivakhnenko, the former deputy commander of company no. 2 of the patrol service regiment (*заступник командира роти № 2 полку патрульної служби ОМУ ГУ МВС України в Одеській області*). The relevant part of the criminal investigation was severed from case no. 0186 (see paragraphs 146-156 above) and registered under case no. 0713.

177. The Government further stated that on 20 September 2021 a bill of indictment had been sent to the Prymorskyy Court. The charges against Mr Ivakhnenko, as summarised by the Government, concerned his failure to respond to the shooting by the anti-Maidan activist "Mr B."[60] in the city centre between 4 p.m. and 5 p.m. on 2 May 2014.

178. Neither a copy of the aforementioned bill of indictment nor any other documents relating to that set of proceedings was provided to the Court. The Government only informed the Court that on 14 June 2024 the Prymorskyy Court had released Mr Ivakhnenko from criminal liability owing to the expiry of the ten-year limitation period under Article 49 of

[60] It appears that reference is made to Mr Budko (see paragraphs 50, 51 and 139-142 above).

the Criminal Code (see paragraph 228 below) and that the prosecutor had challenged that decision on appeal. The case remains pending before the Odesa Regional Court of Appeal.

8. Case no. 0441

179. According to the information provided by the Government to the Court in July 2024, on 31 May 2023 a criminal investigation in respect of the former commander of the Special Police Battalion in the Odesa Region *(командир спеціального батальйону міліції ГУМВС України в Одеській області)*, who was suspected of complicity in organising mass riots, was severed from case no. 0186 and registered under case no. 0441. As no further details or documents were provided to the Court, it remains unclear how the police official in question was involved in the events in Odesa on 2 May 2014 and what exactly he was accused of.

180. It appears that on 4 July 2023 the bill of indictment was sent to the Prymorskyy Court, where the case remains pending.

181. The Government also informed the Court that the following applicants had the procedural status of victims in that set of proceedings: Ms Biryukova and Mr Ivanov (application no. 59531/17), and Ms Gorenko and Ms Zhulkova (application no. 76896/17).

D. Investigations in respect of the SES officials

1. Internal inquiry

182. On 3 June 2014 the SES issued its internal inquiry report concerning the events of 2 May 2014. It was observed that, as soon as the first telephone calls had been received about the tents having caught fire at 7.31 p.m. (see paragraph 64 above), the SES had been obliged to deploy firefighting equipment corresponding to a first-level emergency response, namely two fire engines. However, that had not been done as a result of instructions given by Mr Bodelan (see paragraph 65 above). Nor had there been a timely response to the outbreak of the fire in the Trade Union Building, which had warranted a second-level emergency response *(направлення сил і засобів за Рангом № 2)*. This should have included the dispatch of six fire engines, a turntable ladder, a hose layer and a ventilation truck. The internal inquiry report, however, took note of the particular circumstances of the case, such as obstacles impeding the movement of fire engines, interference with firefighters' operations and threats to firefighters' lives and health (see also paragraph 65 above). It was concluded that there had been a need for non-standard decisions not provided for in existing legislation. Accordingly, no major issues were identified.

2. Criminal investigations

(a) Authorities in charge

183. The investigation was initially assigned to the Odesa Regional MoI Department. However, in December 2014 the PGO transferred the case to the MoI Main Investigation Department because of the lack of effective investigation by the local department.

(b) Case no. 0154

184. On 16 October 2014 a criminal investigation was launched into alleged neglect of duty by the SES officials, without any suspects being defined at that stage. The case was registered in the Unified State register of pre-trial investigations under no. 0154.

185. On 4 February 2015 another criminal investigation was launched in respect of the SES officials, this time concerning the charge of leaving in danger with grave consequences. While initially registered under no. 0054, it was eventually joined to case no. 0154.

186. On 1 March 2016 a notice of suspicion of aggravated leaving in danger was issued in respect of Mr Bodelan (see paragraphs 65, 68 and 182 above). By that time, however, he had gone into hiding[61]. On 2 March 2016 Mr Bodelan was put on a wanted list, and on 9 March 2016 the Kyiv Pecherskyy District Court issued a warrant for his arrest[62].

187. Also on 1 March 2016 a notice of suspicion of aggravated leaving in danger was announced to Mr Shvydenko, the head of the duty shift of the SES operations coordination centre, and his assistant Ms Koyeva, who had handled the telephone calls to the SES on 2 May 2014 (see paragraphs 64-66 and 68-69 above).

188. On 2 March 2016 a similar notice of suspicion was issued to Mr Gubay, Deputy Head of the SES Main Department in the Odesa Region, in charge of responding to emergency situations.

189. It appears that all the applicants impacted by the fire in the Trade Union Building (see Appendix I) except Mr Didenko and Mr Gerasymov (application no. 59339/17), were at some point accorded the procedural status of victims. Mr Didenko and Mr Gerasymov were allegedly subjected to pressure and threats from the authorities on account of their active anti-Maidan position. They therefore waived the procedural status of victims and were questioned as witnesses.

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[61] As known from public sources, Mr Bodelan continued to work in his position as Head of the SES Main Department in the Odesa Region until the expiry of his contract in September 2014. Thereafter he stood as a candidate for the early parliamentary elections of 26 October 2014 in one of the regional single-seat constituencies, but lost.

[62] It appears from public sources that Mr Bodelan fled to Russia, where he obtained Russian nationality and built a career. In February 2024 he was reportedly appointed Head of the so-called “representation office” of the occupied Kherson Region in Moscow.

190. On 23 June 2016 a bill of indictment was approved. On 26 September 2016 the Prymorskyy Court, however, returned it to the investigator because of some procedural shortcomings.

191. On 25 January 2017 a new bill of indictment was approved. The three SES officials were charged with aggravated leaving in danger on account of the delayed dispatch of firefighting vehicles and equipment on 2 May 2014, in compliance with the manifestly unlawful order by Mr Bodelan (see paragraphs 64-66 and 68-69 above).

192. While the case was initially examined by the Prymorskyy Court, on 14 May 2018 the Odesa Regional Court of Appeal transferred it to the Kyivskyy Court because the required judicial formation could not be constituted in the Prymorskyy Court. Many of its judges had been involved in examining various procedural issues during the pre-trial investigation and could not therefore deal with the trial, while some other judges had recused themselves.

193. On 15 March and 13 May 2019 Mr Milev and Ms Nikitenko (application no. 47092/18) lodged civil claims in the criminal proceedings.

194. On 1 August 2022 the Kyivskyy Court stayed the proceedings because the accused's lawyers had been mobilised into the army following the Russian Federation's military invasion of Ukraine on 24 February 2022 (see paragraph 227 below)[63].

(c) Case no. 0119

195. On 11 April 2016 a notice of suspicion of aggravated leaving in danger was also issued in respect of Mr Velykyy, who had been the Deputy Head of the SES Main Department in the Odesa Region *(заступник начальника ГУ ДСНС України в Одеській області)* at the relevant time. The criminal investigation in that part was severed from case no. 0154 (see paragraph 184 above) and was registered as case no. 0119.

196. On 26 June 2018 a bill of indictment was approved. It stated that Mr Velykyy had been aware of the fire and that a considerable number of people had been trapped inside the building and had urgently required assistance. Although being under the legal obligation to ensure the necessary firefighting and rescue efforts, Mr Velykyy had preferred to follow the manifestly criminal order of his superior, Mr Bodelan.

197. The bill of indictment listed the following applicants among the victims: Ms Vyacheslavova (application no. 39553/16); Ms Berezovska (application no. 52632/16); Ms Olena Brygar (application no. 53467/16); Ms Babushkina, Ms Pidorich, Ms Kovriga, Mr Negaturov, Ms Radzykhovska, Mr Dmitriyev, Mr Petrov (application no. 59339/17) and Ms Mishyna (application no. 59339/17); as well as Mr Milev and Ms Nikitenko (application no. 47092/18).

[63] As known from the Unified State register of judicial decisions.

198. The case was sent to the Prymorskyy Court for trial.

199. On 11 September 2019 the Prymorskyy Court applied to the Odesa Regional Court of Appeal for the case transfer to the Kyivskyy Court, as that had been done in respect of the closely linked case no. 0154 (see paragraph 192 above)[64].

200. It appears that the aforementioned request was rejected and that the case remained pending before the Prymorskyy Court.

201. On 20 June 2022 the proceedings were stayed because Mr Velykyy had been mobilised into the army.

202. On an unspecified date later the proceedings were apparently resumed.

203. According to the information in the Unified State register of judicial decisions, on 27 June 2023 the Prymorskyy Court delivered a ruling setting 29 December 2023 as the deadline for the prosecution and the accused to submit evidence. It stated that the case would become time-barred in May 2024.

204. The Court is not aware of any further developments.

(d) Case no. 1428

205. On 30 October 2017 the criminal investigation in respect of Mr Bodelan was severed from case no. 0154 (see paragraphs 65, 68, 182, 184 and 186 above) and registered under case no. 1428. It appears that it was stayed shortly thereafter owing to Mr Bodelan's absconding.

206. No documents or further details are available in the case file before the Court.

207. According to the information provided by the Government, the following applicants were accorded the procedural status of victims in the case: Ms Vyacheslavova (application no. 39553/16); Ms Berezovska (application no. 52632/16); Ms Olena Brygar (application no. 53467/16); Ms Babushkina and Mr Dmitriyev (application no. 59339/17).

208. The Government provided the following statistics in respect of this set of criminal investigations, without giving further details: thirty-four individuals had been questioned as victims; sixteen inspections of objects, documents and buildings had been conducted; seventy-six people had been questioned as witnesses; five sessions of simultaneous questioning had taken place; and two forensic examinations had been ordered and conducted.

[64] This information is known from the Unified State register of judicial decisions.

V. FACTS RELATING TO THE IDENTIFICATION OF THE BODY OF MS VYACHESLAVOVA'S FATHER AND ITS RETENTION BY THE INVESTIGATING AUTHORITIES (APPLICATION No. 39553/16)

209. On 12 May 2014 Ms Vyacheslavova filed a missing person's report with the police after finding out that her father, Mr Vyacheslavov, who had lived alone, had last been seen on 2 May 2014 near the Trade Union Building, shortly before the fire.

210. On the same date the investigator showed her photographs of the charred remains of two men (registered under nos. 1599 and 1616) recovered from the scene, who had still not been identified. According to Ms Vyacheslavova, she recognised body no. 1616 as her father.

211. On 30 May 2014 the two bodies were physically presented to Ms Vyacheslavova for identification. According to her, she identified body no. 1616 as that of her father, but, allegedly being influenced by the investigator, she did not assert that with certainty.

212. On 10 June 2014 an autopsy report in respect of body no. 1616 was issued. It found that the death had been caused by carbon monoxide intoxication and burns.

213. On 11 June 2014 a DNA test was carried out, which did not establish a genetic link between body no. 1616 and Ms Vyacheslavova. The latter's mother explained at the time that Mr Vyacheslavov, who had been legally considered Ms Vyacheslavova's father, was not her biological father.

214. On 20 August 2014 the Odesa Regional Prosecutor's Office wrote to Ms Vyacheslavova to inform her that her request for the release of her father's body (lodged on an unspecified date) could not be granted, as there had been no conclusive identification of the charred remains kept by the investigating authorities[65].

215. On 28 January 2015 the investigator questioned a witness who had seen Mr Vyacheslavov near the Trade Union Building on 2 May 2014. He described the clothes the latter had been wearing at the time.

216. On the same date a forensic medical report was issued in respect of body no. 1616. It documented, in particular, the absence of any upper teeth and specified the missing lower teeth. The expert found it impossible to precisely determine the victim's age because of the extensive charring of the body.

217. On 23 April 2015 Ms Vyacheslavova requested that the investigator release body no. 1616, which she maintained was her father.

218. On 15 May 2015 the investigator replied that, according to the material in the criminal case file, body no. 1616 had not been identified.

[65] It appears that by that time body no. 1616 was the only body recorded as unidentified.

219. On 24 June 2015 Ms Vyacheslavova, her mother and another relative formally identified body no. 1616 as Mr Vyacheslavov, noting, in particular, the shape of the bridge of his nose and the missing teeth.

220. On 30 June 2015 the Odesa Regional Bureau of Forensic Medical Examinations issued Ms Vyacheslavova with a death certificate in respect of Mr Vyacheslavov, which stated that he had died on 2 May 2014 from carbon monoxide poisoning and vapour intoxication.

221. On 1 July 2015 Ms Vyacheslavova once again requested that the prosecution authorities release her father's body, enclosing, in particular, the body identification report dated 24 June 2015 and the death certificate dated 30 June 2015 (see paragraphs 219 and 220 above).

222. On 8 July 2015 the PGO rejected Ms Vyacheslavova's request on the grounds that it had not been convincingly established that the body was indeed that of her father.

223. On 31 August 2015 a forensic medical report concluded that the skull of body no. 1616 could be that of Mr Vyacheslavov.

224. In September and October 2015 Ms Vyacheslavova made at least three requests to the prosecution authorities for the release of her father's body for burial. She was consistently told by the PGO that her similar requests had already been duly considered and rejected and that, if she disagreed, it was open to her to bring judicial proceedings.

225. On 22 December 2015 the PGO sent a letter to Ms Vyacheslavova informing her that, as a result of intervention by the Head of the UN Monitoring Mission, her request for the release of her father's body had been granted.

226. On 29 December 2015 Ms Vyacheslavova received the body of her father, and he was buried the same day.

VI. SUBSEQUENT EVENTS

227. On 24 February 2022 the Russian Federation launched an armed attack and large-scale invasion of Ukraine. Russian propaganda justified this, in particular, by portraying the events in Odesa on 2 May 2014 as a massacre, during which aggressive "Ukrainian Nazis" had locked peaceful pro-federalists in the Trade Union Building and had burnt them alive.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW (AS WORDED AT THE MATERIAL TIME)

A. Criminal Code of 2001

228. Article 49 provided for release from from criminal liability owing to the lapse of the relevant statutory limitation period: ten years in the event of a grave offence (that is, punishable by up to ten years' imprisonment) and fifteen years in the event of a particularly grave offence (that is, potentially punishable by more than ten years' imprisonment).

229. Article 294 § 2 provided for eight to fifteen years' imprisonment for organising mass disorder (riots) involving violence, riotous damage, arson, destruction of property, seizure of buildings or premises, forceful eviction of individuals and resistance to authorities using weapons or other items as weapons. It also covered active participation in riots that caused death or led to other grave consequences.

230. Article 364 § 2 provided that abuse of authority or official powers resulting in grave consequences was punishable by three to six years' imprisonment, with a ban on holding certain positions or engaging in certain activities for up to three years and a fine ranging from five hundred to a thousand times the non-taxable minimum income.

231. Article 365 § 3 provided that abuse of authority or official powers by a law-enforcement official resulting in grave consequences was punishable by seven to ten years' imprisonment with a ban on holding certain positions or engaging in certain activities for up to three years.

232. Article 366 § 2 provided that forgery in office (forgery of documents by an official) resulting in grave consequences was punishable by two to five years' imprisonment with a ban on holding certain positions or engaging in certain activities for up to three years and a fine ranging from two hundred and fifty to seven hundred and fifty times the non-taxable minimum income, as well as a special confiscation measure.

233. Under Article 367 § 2, neglect of duty resulting in grave consequences was punishable by two to five years' imprisonment with a ban on holding certain positions or carrying out certain activities for up to three years and an optional fine of one hundred to two hundred and fifty times the non-taxable minimum income.

B. Code of Criminal Procedure of 2012

234. Article 55 defined a victim (aggrieved party) as a person who sustained damage as a result of a criminal offence. An aggrieved party acquired procedural rights from the moment he or she lodged a complaint

about the offence committed against him or her. Article 56 listed the rights of aggrieved parties, including the right to be informed of a suspicion or charges notified to a defendant and of decisions to discontinue criminal proceedings; the right to submit evidence; the right to appeal against decisions of the investigating authority, the prosecutor and the court; and the right to obtain compensation for damage caused by the offence.

235. Article 230 concerned the procedure for body identification. Prior to the identification, the prosecutor or investigator had to clarify with the person concerned whether she or he was able to recognise the body and how. If the person could not specify individual features for the identification but still identified the body by several distinctive marks taken cumulatively, that was to be specified in the relevant identification report.

236. Article 238 § 4 provided that a dead body could be released only with written permission from the prosecutor and only after an autopsy report had been issued and the cause of the death had been established.

C. Police Act of 1990 (in force until 2 July 2015)

237. The relevant provisions read as follows:

Section 5 – Police activities and citizens' rights

"The police shall fulfil its tasks in an unbiased manner and in strict compliance with the law. No exceptional circumstances or officials' orders may serve as grounds for unlawful actions or omissions by the police. Police officers shall take measures to ensure public order regardless of their subordination."

Section 10 – Main duties of the police

"Where a police officer receives information or otherwise becomes aware of events threatening security or public order, regardless of his or her post, the location of the events and the time, he or she shall take measures with a view to preventing and putting an end to offences, saving people, providing assistance to those requiring it, identifying and arresting offenders, securing the scene of the events and reporting the information to the nearest police station."

D. Order no. 1345 of the Ministry of the Interior of 11 November 2003 on quelling mass riots[66]

238. The Order provided guidance on the actions of all related law-enforcement units aimed at quelling mass riots.

239. Paragraph 2.2 concerned the necessary preparations, which included: an assessment of the situation and available resources; the development and

[66] While the Order is categorised as "for official use only" (*для службового користування*) and is not publicly accessible, a copy was provided to the Court by Ms Vyacheslavova (application no. 39553/16).

approval of the "Wave" *(«Хвиля»)* contingency plan; staff training; and logistical support.

240. As further stipulated in point 2.2.2, when assessing the situation, the Head of the Police Department *(начальник ГУ МВС, УМВС)* was required:

(a) to determine the reasons capable of triggering (or having triggered) mass riots and to estimate their possible evolution, on the basis of which to make a forecast on possible actions by offenders and to assess the likelihood of the use of arms or other weapons by them, to estimate the possible timing and scale of the riots and, accordingly, to define the scope of related tasks for the law-enforcement authorities;

(b) to assess the conduct and social climate among the local population and to make a forecast on the possible involvement of specific groups in the riots or in providing assistance with the maintenance of public order;

(c) to assess the specific characteristics of the areas concerned and, accordingly, to prioritise efforts and distribute resources, to estimate staff and equipment needs, to determine departure points for various units and to plan avenues of approach; and

(d) to assess the available resources and to identify any need for assistance.

241. In accordance with points 2.2.4 and 2.2.5, a proper assessment of the situation required an actual on-site inspection (reconnaissance) carried out with representatives of the emergency services, notably fire protection units.

242. Police management were to draw reasoned conclusions on the basis of the aforementioned comprehensive assessments, accompanied by specific proposals. Those conclusions, in turn, formed the basis of a related decision by the head of the police department, which was to be communicated to all subordinate managers and officers in the form of an order (points 2.2.6 to 2.2.9).

243. Where mass riots were limited to a single region, the "Wave" contingency plan (providing for specific measures by all related law-enforcement units and authorities, in particular, with a view to disarming and preventing armed persons from firing) was to be launched by the Head of the Police Department (paragraph 3.1).

244. The guidance also contained detailed provisions concerning the structure, staffing, tasks and equipment of various specific groups and units, as well as the tactics to be used in different situations.

II. OTHER RELEVANT DOMESTIC MATERIAL

A. Findings by the Ukrainian Parliament Commissioner for Human Rights ("the Ombudsperson")

245. Shortly after 2 May 2014 the Ombudsperson, on her own initiative, conducted an inquiry into the events and the authorities' compliance with their legal obligations. The findings of that inquiry were summarised in the Ombudsperson's 2014 Annual Human Rights Report published in early 2015.

246. The Ombudsperson noted that, as indicated by extensive video footage circulating on the internet, law-enforcement officials had failed to prevent the mass disorder, even where firearms had been used by individuals. No adequate response had followed.

247. Furthermore, having reviewed the logbooks and other documents held by the local police, the Ombudsperson determined that the police had been systematically informed of the escalating situation. Nonetheless, the first arrests had not been made until after 5 p.m., by which time five people had already died from firearm injuries. A second round of arrests had taken place only after further deaths had resulted from the fire in the Trade Union Building.

248. The Ombudsperson also found that, under the existing legal framework, the law-enforcement authorities had been required to activate the "Wave" contingency plan, which had not been done. She discerned indications of an attempt to have the relevant order signed retrospectively.

B. Report of the Parliament Temporary Investigation Commission on its inquiry into the deaths in Odesa (approved on 2 September 2014)

249. The Parliament Temporary Investigation Commission was established on 13 May 2014. Its primary task was to collect complete and reliable information, particularly about the circumstances surrounding the violent deaths in Odesa on 2 May 2014.

250. The Commission found a number of shortcomings in the preparedness of the police to deal with the anticipated mass disorder. For example, the police officers who had been expected to implement the contingency plan had not actually been informed; the mobility of the police squads deployed at the stadium had been inadequate; and the collection and analysis of intelligence reports as to possible incitements to violence before and during the football match had not been properly coordinated or organised. The report also stated that, during the clashes in the city centre, the police had failed to take adequate measures to arrest those taking part in the mass disorder and, for the most part, had not intervened at all. The Commission

recommended that the Verkhovna Rada forward its report to the PGO, MoI and SSU.

251. On 27 November 2014, following the parliamentary elections, the new Verkhovna Rada was formed. Under the Rules of the Verkhovna Rada this terminated the mandate of the above-mentioned Commission.

C. Findings by the "2 May Group" NGO concerning the fire in the Trade Union Building

252. The conclusions of the 2 May Group as to the fire in the Trade Union Building and the causes of the related deaths (as summarised in Annex VII to the IAP Report, footnotes omitted) read as follows:

> "1. Experts from the 2 May Group, who had conducted examinations of the causes and development of the fire at the Trade Union Building and the causes of the related deaths, offered the Panel the following explanations.
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> 2. The fire in the Trade Union Building started when the barricade in front of the entrance to the building caught fire as a result of the exchange of Molotov cocktails between the opposing groups of activists. The fire subsequently spread through the entrance door into the lobby of the building. There were also other sources of fire, for example on the staircase between the third and fourth floors. These sources were secondary as they occurred as a result of the fire spreading from the lower floors.
>
> 3. The first phase of fire, in the lobby, lasted about nine minutes, during which time the temperature of the surfaces gradually increased. There were numerous flammable objects in the lobby, including the wooden pallets brought into the building from Kulykove Pole to use for barricades, old office furniture and an 18 litre oil tank which exploded. The complex interior design of the Trade Union Building, together with the barricades and closed passages, including parts of the left and right stairwells and the exit to the roof, compounded by heavy smoke and poor illumination, led to a situation where people were trapped inside and were not able to find escape routes. Tragically, many people fled to upper floors rather than attempting to leave the building through the other exits on the ground floor, possibly because they were afraid of the pro-unity activists outside.
>
> 4. The second phase of the fire developed rapidly, as the central stairwell caught fire, causing the air temperature to increase up to 700 degrees Celsius and very hot air to rise to the upper floors. Many persons were in the stairwell at that moment. At this moment people started to jump out of the windows. The greatest number of casualties occurred during the second phase. Most of the victims died from carbon monoxide poisoning and burn injuries, with some others killed as a result of trying to escape the fire by jumping out of the building. According to the 2 May Group, no-one died in the Trade Union Building other than as a direct result of the fire.
>
> 5. The fire started at 7.44 p.m. Before that, at 7.27 p.m., the tents on Kulykove Pole in front of the Trade Union Building had caught fire. The first calls to the fire service were made at 7.31 p.m. During the first phase, it might have been possible to extinguish the fire and save lives if even only one fire engine had been there. However, the first fire engine arrived 45 minutes after the first calls. In the opinion of the 2 May Group, the high number of deaths was caused by the incompetent acts and omissions of the fire service, including the delay in arriving at the scene and the failure to take emergency reanimation measures."

III. MATERIAL FROM COUNCIL OF EUROPE BODIES

A. Resolution 1988 (2014) of the Parliamentary Assembly of the Council of Europe (PACE) on recent developments in Ukraine: threats to the functioning of democratic institutions, adopted on 9 April 2014

253. The relevant parts read as follows:

"14. The Assembly regrets that the democratic changes and political developments in Ukraine have been overshadowed by the developments in Crimea. The Assembly strongly condemns the authorisation of the Parliament of the Russian Federation to use military force in Ukraine, the Russian military aggression and the subsequent annexation of Crimea, which is in clear violation of international law, including the Charter of the United Nations, the Helsinki Final Act of the OSCE and the Statute and basic principles of the Council of Europe.

15. In the view of the Assembly, none of the arguments used by the Russian Federation to justify its actions hold true to facts and evidence. There was no ultra-right wing takeover of the central government in Kyiv, nor was there any imminent threat to the rights of the ethnic Russian minority in the country, including, or especially, in Crimea. Given that neither secessionism, nor integration with the Russian Federation, was prevalent on the political agenda of the Crimean population, or widely supported, prior to Russian military intervention, the Assembly considers that the drive for secession and integration into the Russian Federation was instigated and incited by the Russian authorities, under the cover of a military intervention."

B. Information note published by the PACE Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe on 25 August 2014, following their fact-finding visit to Kyiv and Odesa (7 to 11 July 2014)

254. The relevant extracts read as follows (footnotes omitted):

"25. During our meeting with the Chairman of the Security Service of Ukraine (SBU), we were provided with information documenting the widespread involvement of Russian army specialist and volunteers, as well as the supply of increasingly advanced and heavy armoury by Russia, to the separatist forces. Many Western governments have referred to similar information, as proof of Russia's continuing involvement in the conflict. Of special concern to the SBU was the fact that they had noted, and foiled, an increasing number of attempts to create clashes and instigate separatist unrest in other parts of south-east Ukraine, in particular in Odessa. According to the SBU, fairly regular arrests have been made of small groups of individuals, reportedly many of them Russian citizens, armed with weapons and explosives, outside the area where the armed insurgency is taking place. These reported attempts to spread the insurgency beyond the Donets-Luhansk regions, and especially to Odessa, given its proximity to the Transnistrian region of Moldova, is of serious concern to us.

...

V. Odessa

29. Odessa has considerable strategic value, it being a Black Sea harbour town and a gateway to the border with Transnistria, which is under *de facto* Russian control. Ethnic Russians are a minority in Odessa of approximately 30% of the population. The percentage of ethnic Russians in the Odessa Oblast is considerably lower. Due to its proximity to Romania and the Republic of Moldova, Odessa Oblast has a sizable ethnic Romanian minority. Despite initial unrest, Odessa has been calm and firmly in support of the unity of the Ukrainian State. On 2 May 2014, protests in Odessa turned violent, resulting into a tragedy in which at least 42 persons died. Of these, 37 were pro-Russia demonstrators who died in a fire in the Trade Union House in Odessa, which was given very prominent attention on the Russian media and social networks.

30. In April, tensions were rising in Odessa which led to the fear that the armed insurgency would spread to that city. A permanent tent camp of pro-Russia protesters was set up in one Odessa's main squares close to the Trade Union House. At the same time, pro-unity demonstrations were organised regularly to show support for the new authorities in Kyiv. The possibilities for violent incidents were clearly in place.

31. On 2 May 2014, a demonstration for national unity was planned before the football match was to take place between FC Chornomorets Odessa and FC Metalist Kharkiv. A small contingent of Right Sector activists also participated in this demonstration, but, reportedly, the majority of demonstrators were ordinary citizens. This demonstration, estimated at 1500 persons, was met by a group of around 300 pro-Russia supporters who were armed with batons and shields. Reportedly, the police did not intervene when this group attacked the pro-unity demonstrators. The clashes escalated and shots were fired, reportedly killing at least five pro-unity supporters. Following the attack on the pro-unity demonstration, pro-unity supporters moved to Kulikovo Field with the intention of clearing the pro-Russia camp that had been set up there. Overwhelmed by the pro-unity supporters, the pro-Russia supporters fled into the Trade Union Building that is situated on Kulikovo Field.

32. The exact sequence of events is unclear but it is clear that both sides were pelting each other with stones and Molotov cocktails. In the course of these clashes a fire broke out on the second floor of the Trade Union House that spread rapidly to the third floor. Fire brigades reportedly arrived very late and could not reach the fire due to the large number of people present outside. At the end of the day, at least 37 persons had died as a result of the fire, most of them from asphyxiation / carbon monoxide poisoning and several who leaped to their death to escape the fire.

33. On Russian broadcast media and social networks it was alleged that the real number of deaths from this tragedy was considerably higher and many conspiracy theories were circulated, adding to the tensions around this tragic incident.

34. The authorities have started an investigation into the causes of this tragedy and exact sequence of events on that day. In addition, the investigation into this tragedy has been added to the mandate of the international advisory panel that was established by the Council of Europe. Many interlocutors, from different sides and for different reasons, have expressed their doubt that the authorities will investigate the events impartially and transparently. In that context, a noteworthy investigation has been established by civil society. This investigation, which is being conducted by a group of experts from both the Russian and Ukrainian communities in Odessa, aims to provide an independent and impartial narrative of the events of 2 May 2014, as well as of the allegations that were made in that context. While the report of this civil society investigative commission has not yet been finalised, they indicated that the many allegations and conspiracy theories that circulated were not grounded in evidence. Their

research regarding the origins of this tragedy reportedly is focussing on what seems to be nearly criminal inaction of the police forces, which failed to take any adequate action against the events that were evolving that day."

C. Report by the International Advisory Panel (IAP)

255. After the tragic events in Odesa on 2 May 2014, the mandate of the IAP, which had been constituted by the Secretary General of the Council of Europe in April 2014 (for its composition, see *Shmorgunov and Others*, cited above, § 239) to review compliance of the Maidan-related investigations with Articles 2 and 3 of the Convention, was extended to also cover the Odesa investigations.

256. The IAP began its review of the Odesa investigations in February 2015 and published its report on 4 November 2015. As stated in the introduction, the IAP viewed its role and the limits thereof as follows:

"As is clear from the terms of the Mandate, it was never the role of the Panel to conduct or assist the investigation into, or to establish the facts concerning, the violent incidents in question. This was and is exclusively the responsibility of the Ukrainian investigatory authorities, namely the PGO and the Ministry of the Interior ('the MoI'), both of which were charged with responsibility for certain of the casefiles in the Odesa-related investigations. Nor did the Panel have the role of determining whether the investigation of any individual case satisfied the requirements of the Convention. Its role was essentially a supervisory one, the Panel reviewing in broad terms whether the investigations carried out at national level into the deaths and injuries complied with international standards. In making this assessment, the Panel has on various occasions scrutinised the adequacy of the investigation of individual incidents that had attracted particular public attention. This was done not for the purpose of arriving at a conclusion on the quality of the specific investigation but rather as providing useful indications of the adequacy and effectiveness of the investigations seen as a whole."

257. Before turning to an assessment of whether the authorities had complied with the requirements of Articles 2 and 3 of the Convention, the IAP noted that the investigations had been confronted by the following significant challenges:

- a drain on the authorities' limited resources in terms of both the prevention and investigation of crime, given that by 2 May 2014 they had already been pursuing a range of complex investigations, including those concerning the violent events in Maidan, the abuse of power and economic crimes allegedly committed by high-ranking officials of the former regime and terrorist activity in the eastern regions;
- the unprecedented nature of the events at issue, given the number of persons involved in the clashes and the resulting toll of dead and injured, and the absence of specialists experienced in dealing with such large-scale disorder and violence;
- the geographical spread of the disorder, given that several busy streets and buildings, including a shopping centre, had become battlefields,

and the authorities had been required to seal and search the area as quickly and thoroughly as possible so as not to unduly disrupt life in the city;

- difficulties in identifying participants in the mass disorder, given that many of them had had their faces hidden by masks, scarves or balaclavas;
- the reluctance of witnesses to cooperate with the authorities and provide evidence, given the significant political divisions and lack of trust still affecting society; and
- a significant decrease in the number of investigative staff of the PGO over the preceding few years, in line with various Council of Europe and international recommendations to reduce its investigative role.

258. The IAP emphasised, however, that those challenges could not excuse any failings which had not inevitably flowed from them, and that the authorities had clearly been, and were, under an obligation to take all reasonable steps to ensure that the investigations complied with the requirements of Articles 2 and 3 of the Convention (paragraphs 203 and 204 of the report).

259. With regard to compliance of the investigations with the independence requirement, the relevant paragraphs of the IAP report read as follows (references omitted):

> "206. In assessing whether the investigations under review were independent, the Panel notes that, from the outset, there were allegations, supported by video evidence, of collusion between certain members of the police force deployed to protect public order on 2 May 2014 and activists involved in the mass disorder. According to the PGO, the possibility of collusion between law enforcement officers and activists is being examined as part of the investigation in the case concerning police conduct, which is within the competence of the [Main Investigation Department] of the PGO. However, the investigation into the conduct of the activists involved in the mass disorder, including, presumably, those who may be suspected of having conspired with police officers, is being carried out by the MoI. It was submitted to the Panel that the police officers under investigation and the [Main Investigation Department] investigators in charge of the case belong to different and separate departments of the MoI. The Panel observes, however, that, given the evidence indicative of police complicity in this case, the Convention standards and European Court's case law cited above require that the mass disorder as a whole, including the conduct of both the police and activists, be investigated by an organ entirely independent from all the actors under investigation. It does not consider that the [Main Investigation Department] of the MoI meets this criterion.
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> 207. For the same reasons, the decision to allocate the investigation of the conduct of the SES staff to the MoI raises a serious issue of lack of institutional and practical independence. However, since April 2014 the Cabinet of Ministers has coordinated and directed the activity of the SES through the Minister of the Interior, who also participates in the process of the appointment and dismissal of the head of the SES and may represent the SES in the Government. The SES is financially accountable to the MoI and is funded from the State budget through funds allocated to the MoI. The Panel observes, therefore, that there is a relationship of hierarchy between the Minister of the Interior and the SES. Furthermore, in the words of the MoI investigators,

because of the status of the SES as a State body, it would not have occurred to them to institute a criminal investigation against SES officials of their own motion."

260. The IAP observed that, although the mass disorder had occurred in the course of a conflict between two opposing groups of activists, a year after the events all but one of the twenty-three suspects whose cases had been sent to court in respect of the mass disorder were anti-Maidan activists, whereas only three persons from the opposing group had been notified of suspicion. The IAP noted in that regard that it was of central importance for the purposes of maintaining the confidence of all sectors of the public in the criminal justice system that the authorities, including the judicial authorities, were seen to act in an impartial and equal manner in the conduct of the investigations and court proceedings.

261. The IAP further welcomed the recent legislative steps taken towards the creation of the State Bureau of Investigations and emphasised the need to set up such a body in full compliance with the Court's case-law and Council of Europe standards and recommendations.

262. It formulated its conclusion regarding the compliance with the independence requirement as follows:

"211. Given the evidence indicative of police complicity in the mass disorder of 2 May 2014 in Odesa, Articles 2 and 3 require that the investigation into the mass disorder as a whole be carried out by an organ entirely independent from the police. Similarly, the investigation into the conduct of the fire service cannot be regarded as independent, given the structural links between the SES and the MoI. These concerns again highlight the need for an independent and effective mechanism for the investigation of serious human rights violations committed by law enforcement officers and other public officials.

212. In addition, the Panel considers that it is of central importance for the purposes of maintaining the confidence of all sectors of the public in the criminal justice system that the authorities, including the judicial authorities, are seen to act in an impartial and equal manner in the conduct of the investigations and court proceedings."

263. In assessing the effectiveness of the investigations, the IAP noted that, although the investigative work concerned the same set of closely related events, it had been divided between the PGO (having the responsibility to investigate police conduct) and the MoI (investigating the actions of civilians in connection with the mass disorder in the city centre and the fire in the Trade Union Building). In the IAP's view, that was inefficient and detrimental to the effectiveness of the investigations. The IAP also found that the quality, progress and effectiveness of the investigations had been affected by the decision to allocate the investigation of the actions of the SES to the local MoI, which had remained inactive during the crucial early stages.

264. The IAP noted that the authorities had not been able to provide it with clear, detailed and consistent information on the personnel assigned to the investigations carried out by the PGO and the MoI. Based on the information provided, it made the following general conclusion. Although finding it commendable that both the PGO and the MoI had sought to ensure

continuity as regards the main investigators in Odesa, the IAP found that the reduction of each authority's investigation team had had a detrimental effect on the progress, quality and effectiveness of investigations and considered the current staffing levels to be inadequate.

265. The extracts concerning the quality of the investigations read as follows:

> "230. So far as concerns the investigations into the conduct of the police, the Panel observes, in the first place, that it took two weeks for the authorities to obtain a warrant for the arrest of Mr Fuchedzhy, giving him the opportunity to flee the country. The Panel notes the PGO's explanations that the pre-trial investigation had originally been led by investigators from the Prosecutor's Office in the Odesa Region and that its own investigators had only taken over the investigation on 7 May 2014, by which date Mr Fuchedzhy had already fled the jurisdiction. The Panel, however, recalls that the effectiveness of an investigation must be assessed as a whole and the fact that the responsibility originally lay with another investigatory body is no excuse for a lack of diligence. Further, the Panel is not persuaded by the PGO's contention that there was insufficient evidence to justify measures being taken against Mr Fuchedzhy's so soon after the events of 2 May. There is no dispute that, on that date, Mr Fuchedzhy was in charge of public order protection in Odesa. Given the serious failure of the police to react to the mass disorder and the grave consequences which flowed therefrom, both of which facts were already known to the authorities on the same day or shortly thereafter, his conduct should have been the subject of immediate investigation. In the Panel's view, there were sufficient grounds for suspicion to justify the authorities in applying for some form of preventive measure. The Panel is not aware of any attempt to do so in the first days after 2 May 2014 and, in the absence of any preventive measure, Mr Fuchedzhy succeeded in absconding; the investigation concerning him has, as a result, been suspended ever since. The fact that the key suspect has disappeared has indisputably impaired the effectiveness of the investigation.
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> 231. Secondly, it remains unclear why it took almost a year for the authorities to come to the conclusion that the "Wave" plan had not been implemented on 2 May 2014 and that the documents relating to its alleged implementation had been forged. It is striking that in her report of June 2014, which was immediately communicated to the PGO, the Ombudsperson concluded, on the basis of evidence set out in the report, that the "Wave" plan had not been implemented and that the documents had been forged. Despite the evidence identified by the Ombudsperson, Mr [Lutsyuk] was not notified of suspicion in this respect until 30 April 2015, almost one year after the events in question. As noted above, a failure promptly to follow up an obvious line of inquiry undermines the possibility to establish the full circumstances and falls foul of the required standard of effectiveness.
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> 232. The Panel finds similar deficiencies in the effectiveness of the investigations into the mass disorder and the fire on 2 May 2014. In the first place, the Panel notes that the authorities failed to take sufficient measures to secure the evidence in a timely manner, a fundamental requirement of an effective investigation. In particular, although the Trade Union Building was searched by the authorities immediately after the fire had been extinguished; it was opened to the public on 4 May and was not placed under legal control until 20 May 2014, nearly three weeks after the events. The Panel considers that this gave rise to a substantial risk of evidence being removed from, or brought into, the building. While the MoI investigators did not believe that the decision to grant public access had in fact impaired the task of gathering evidence, they acknowledged before the Panel that the decision to do so had not been correct.

233. Similar concerns exist in relation to the authorities' handling of other crime scenes in the city centre. The PGO representatives accepted before the Panel that, owing to the widespread nature of the crime scenes, some evidence might have been overlooked.

234. The Panel considers that, seen as a whole, there was no proper coordination of the measures taken to preserve and gather evidence during the days immediately after the events, despite the presence in Odesa of high ranking officials. This may well have been related to the fact that, at that early stage, Mr [Lutsyuk] and then Mr [Fuchedzhy], both subsequently notified of suspicion in relation to the events of 2 May, were still in charge of the local police force, which had the responsibility for carrying out the initial steps in the investigation.

235. Secondly, the Panel finds that certain forensic examinations were not diligently carried out. For example, the first forensic report on the fire was prepared in July 2014 without any on-site inspection of the Trade Union Building. Nine months later, an inter-agency complex forensic examination was ordered in April 2015 and, at the end of August 2015, was still underway. Although, formally, these examinations were ordered in two different sets of proceedings and the PGO denied that the latter examination was aimed at rectifying shortcomings in the former, the Panel was left with the clear impression that this was at least one of its aims – an impression that was confirmed by the evidence of the MoI investigators. By way of further example, the Panel notes the failure of the authorities, for over a year, to identify one of the bodies found in the Trade Union Building.

236. The deficiencies in the investigation of the conduct of the SES staff remain the most striking example of a lack of diligence. This investigation was not commenced until 16 October 2014, and then only following the complaint of a third party. On a question being put by the Panel, the authorities admitted that there was no justification for the delay, although it was subsequently claimed that, initially, there had been no grounds justifying the opening of an investigation. The Panel finds this latter qualification difficult to accept. The fact that there had been a fire in the Trade Union Building, which had resulted in a considerable loss of life, and that, despite numerous emergency calls, the fire brigade had only arrived on the scene after a substantial and unexplained delay, was known to the authorities at an early stage and provided ample grounds for the initiation of an investigation into the conduct of the SES staff. This was all the more the case, having regard to the findings of the SES internal inquiry, that appropriately equipped fire-fighting units should have been sent after receipt of information about burning tents on Kulykove Pole at 7.31 p.m. and information about the fire in the Trade Union Building at 7.45 p.m., findings which resulted in the reprimand of Mr Bodelan, the Head of the Main Department of the SES in the Odesa Region. Moreover, once the investigation had eventually been opened, over five months after the events, the Odesa Regional MoI, which was initially entrusted with its conduct, showed no diligence in pursuing it, with the result that some two months later it was transferred to the MID of the MoI. The Panel considers unacceptable the fact that the first real efforts to carry out an investigation into the conduct of the SES staff were not made until December 2014, by which time Mr Bodelan had left the service and, since he had not been notified of suspicion, his whereabouts were, and continue to be, unknown to the authorities. Further progress in the investigation has not been assisted by the refusal of the SES to conduct a further internal inquiry, despite the express request of the MoI.

Conclusion

237. The Panel finds that, in respect of each of the matters under investigation, the relevant authorities failed to show sufficient thoroughness and diligence in initiating and/or pursuing the investigations, with the result that their overall effectiveness was compromised."

266. The IAP noted that, while twenty-one persons had been indicted for organising or participating in the mass disorder, the charges against them had not been individualised, which had already caused and risked causing further delays in the progress of the proceedings (see paragraphs 242-43 of the report). Furthermore, the IAP took note of the repeated recusals of judges, which had led to delays in the commencement of the criminal proceedings as a whole (see paragraphs 243-44 of the report).

267. The IAP's findings concerning the compliance of the investigations with the requirement of promptness and reasonable expedition were worded as follows:

"249. The Panel has already found that each of the investigations has been marked by serious deficiencies and considers that these deficiencies have significantly protracted the investigative response to the events of 2 May. In particular, the investigations in relation to the conduct of the police and to the mass disorder and fire have been protracted as a result of such deficiencies as the authorities' failure to secure the presence of a key suspect, the failure to follow an obvious line of inquiry and the failure to take prompt measures to secure evidence. The investigation into the conduct of the SES staff was instituted almost half a year after the events in issue and was not thereafter pursued with expedition. In addition, as noted above, the conduct of the trials of the 21 suspects and Mr [Khodiyak] have already been subject to certain delays. While, as the Panel has already noted, the authorities were confronted with significant challenges in conducting the investigations, the Panel finds that these do not wholly explain the lack of promptness or expedition that has occurred.

Conclusion

250. The Panel considers that the investigation into the conduct of the SES staff was neither promptly commenced nor pursued with reasonable expedition. The investigations into the mass disorder and the fire on 2 May 2014 and into the conduct of the police on 2 and 4 May 2014, while promptly instituted, have been subject to a number of deficiencies that have significantly protracted the investigative response."

268. With regard to public scrutiny of the investigations, the IAP made the following conclusion:

"The Panel considers that the events in Odesa on 2 May 2014 were of such importance that the authorities were required to provide sufficient information about the investigations to facilitate meaningful public scrutiny. While the authorities provided a considerable amount of information, there was no effective communication policy in place, with the result that some of the information provided was difficult to understand, inconsistent, and unevenly presented and was provided with insufficient regularity."

269. The IAP reiterated that it did not have the role of examining individual complaints. Accordingly, it limited its conclusions regarding

involvement of victims and next of kin to pointing out the relevant principles of the Court's case-law. It also made the following observations:

> "270. ... in contrast to the pre-trial investigations in Maidan cases, where the PGO held monthly meetings with the next-of-kin of protesters who died during the Maidan events, the investigatory authorities in the present case do not appear to have taken any co-ordinated measures to ensure that victims and next-of-kin received regular updates on the progress of the pre-trial investigations. The Panel considers this regrettable and finds that the information provided to the general public concerning the investigations into the events of 2 May is not in itself sufficient to protect the rights or the legitimate interests of the victims and next-of-kin."

270. The IAP assessed the status of the various investigations as at 31 August 2015 as follows:

> "274. The material before the Panel reveals a marked lack of progress in the following important investigations.
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> 275. In the investigation into the conduct of the police on 2 May 2014 only one person, the former Head of the MoI Office in the Odesa Region, is likely to stand trial within the near future. Another key suspect, the former deputy head of the same office, has absconded and the proceedings concerning him have since been suspended. No one else has been notified of suspicion in relation to this investigation. The authorities submitted to the Panel that the conduct of other police officers – the mid- and low-rank police officers, in particular – was being investigated. After 14 months of investigation the authorities are still not able to determine conclusively what was the role of the police in the violent events in Odesa on 2 May 2014 and whether there was any collusion between police officers and pro-federalist activists, as some of the available video footage appears to suggest.
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> 276. As for the conduct of the police on 4 May 2014, three officers have been on trial since the end of 2014 and so far these proceedings have not yielded any decision on the merits. As noted above, the former Deputy Head of the MoI Office in the Odesa Region, also a key suspect in relation to this investigation, has absconded and the proceedings concerning his conduct on 4 May 2014 have since been suspended.
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> 277. In the investigations into the mass disorder and fire on 2 May 2014, of the hundreds of persons allegedly involved in the clashes on both sides, 21 pro-federalists are on trial on virtually identical charges of participation in the mass disorder, with one of them additionally charged with its organisation. Although the court proceedings commenced at the end of 2014, they have not to date yielded any decision on the merits. In addition, five persons have recently been charged, mainly with participation in mass disorder, and the court proceedings concerning them are underway. Proceedings concerning another pro-federalist were terminated on the grounds of the insufficiency of evidence, when the true reason for the termination was his exchange for SSU officers held prisoner in the conflict zone in the East. Other key persons, including the alleged organiser of the mass disorder and another seen on video footage shooting into the crowd, have absconded and the proceedings concerning them have been suspended.
>
> 278. Of the pro-unity activists, three alone have been notified of suspicion: the proceedings concerning one were discontinued following his death; the proceedings concerning another person, suspected of assaulting those who had been jumping from the burning Trade Union Building, were terminated because of insufficient evidence and later resumed by court order; the proceedings concerning the third, suspected of

having committed murder on 2 May 2014, have progressed to trial, which is on-going. The Panel has not been made aware of any other proceedings, pending or imminent, against any other person.

279. Out of the six instances of death caused by firearm or airguns, the authorities have not as yet identified the weapons by which the fatal injuries were inflicted. No person has been notified of suspicion of having caused the fire in the Trade Union Building.

280. The investigation into the conduct of the SES staff, which did not begin until over five months after the events in question, has made little progress. No person has been notified of suspicion and the authorities appear to be still awaiting the conclusions of the inter-agency forensic examination.

Conclusion

281. The Panel considers that substantial progress has not been made in the investigations into the violent events in Odesa on 2 May 2014. While this outcome may be explained to some extent by the contextual challenges, the Panel considers that the deficiencies identified in this Report have undermined the authorities' ability to establish the circumstances of the Odesa-related crimes and to bring to justice those responsible."

IV. MATERIAL FROM THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)

271. In the aftermath of the Maidan protests, the Ukrainian government invited the OHCHR to monitor the human rights situation in the country and provide regular public reports on it. To that end, the United Nations Human Rights Monitoring Mission in Ukraine ("the HRMMU" or "the UN Monitoring Mission") was established in March 2014. Its staff were deployed, *inter alia*, in Odesa, where they were eyewitnesses to the events of 2 May 2014.

272. In its report on the human rights situation in Ukraine of 15 May 2014 covering the period from 2 April to 6 May 2014, the OHCHR described the methodology of the HRMMU as follows:

"10. The HRMMU monitors reports of human rights violations by conducting on-site visits (where access and security allow), carrying out interviews, gathering and analysing all relevant information. The HRMMU exercises due diligence to corroborate and cross-check information from as wide a range of sources as possible, including accounts of victims and witnesses of human rights violations, state actors, the regional authorities, local communities, representatives of groups with diverse political views, the Ombudsman Institution, civil society organisations, human rights defenders, regional organisations, UN agencies and the diplomatic community. The HRMMU also collects information through secondary sources, such as media reports and information gathered by third parties. Wherever possible, the HRMMU ensure that its analysis is based on the primary accounts of victims and/or witnesses of the incident and on-site visits. On some occasions, primarily due to security-related constraints affecting access, this is not possible. In such instances, the HRMMU relies on information gathered through reliable networks, again through as wide a range of sources as possible that are evaluated for credibility and reliability.

> 11. Where the HRMMU is not satisfied with the corroboration of information concerning an incident, it will not be reported. Where information is unclear, the HRMMU will not report on the incident and conclusions will not be drawn until the information obtained has been verified."

The OHCHR also made the following statement in the report:

> "iv. The Government of Ukraine needs to carry out a prompt, transparent and comprehensive investigation into the violent events in Odesa and ensure that the perpetrators are brought to justice in a timely and impartial manner. The impact of the 2 May violence in Odesa has hardened the resolve of many, and strengthened the rhetoric of hatred."

273. In its subsequent report on the human rights situation in Ukraine, of 15 June 2014, covering the period from 7 May to 7 June 2014, the OHCHR provided its summary of the events of 2 May 2014 and gave an overview of the ongoing investigations. The relevant parts of that report have been taken into account in the summary of the facts in paragraphs 30-74 above and are therefore not repeated here. The OHCHR also noted in its report:

> "92. As the investigations continue, some key questions must be addressed to ensure confidence in the investigation and to guarantee accountability, due process and to enable the communities to fully accept the results of such an investigation. Issues to be clarified include:
>
> a. the identification of the perpetrators who were shooting at protesters during the afternoon;
>
> b. the conduct of the police on 2 May – why the police and the fire brigade either did not react, or were slow to react and who ordered what action;
>
> c. what happened in the Trade Union Building and what caused the fire there;
>
> d. what was the cause of the deaths in the Trade Union Building;
>
> e. the identification of the perpetrators of the incidents and violence surrounding the fire in the Trade Union Building;
>
> f. the need to guarantee justice for the victims and due process for the detainees."

274. In its subsequent reports, the OHCHR observed little or no progress in the investigations. It also expressed concerns regarding continuing delays with no apparent justification, pressure on the judiciary by "pro-unity" activists, and possible bias of the prosecution against "pro-federalism" activists.

275. The OHCHR report "Accountability for killings in Ukraine from January 2014 to May 2016", published on 14 July 2016, contained the following findings (references omitted):

> "26. While the 'pro-unity' and 'pro-federalism' groups both played a part in the escalation of violence, the subsequent criminal prosecutions for hooliganism or public disorder appear to have been initiated in a partial fashion. Only activists from the 'pro-federalism' camp have been prosecuted so far, while the majority of victims were supporters of 'pro-federalism' movement. Despite a large number of deaths during the 2 May 2014 violence, the trial of the only person to be accused of an act of killing

in the city centre has not yet started. It is persistently transferred from one court to another court in Odesa. Judges have refused to try the accused, reportedly due to pressure from the 'pro-unity' camp.

27. OHCHR remains concerned that to date, the investigations into the violence have been affected by systemic institutional deficiencies and characterized by procedural irregularities, which appear to indicate an unwillingness to genuinely investigate and prosecute those responsible. There has also been direct and indirect political interference into the investigations, consisting of deliberate acts leading to the obstruction of, and the delay in, the judicial proceedings."

276. On 2 May 2019 the UN Monitoring Mission issued a briefing note entitled "Accountability for Killings and Violent Deaths on 2 May 2014 in Odesa". With regard to the investigation into the killings in the city centre, the UN Monitoring Mission observed that the perpetrators responsible had not been identified and that, reportedly, the police had not been able to identify all weapons used or to connect them with their owners. It was noted that, instead, the police had focused their investigation and prosecution mainly on "pro-federalism" supporters, alleging their participation in the unrest in the city centre. The UN Monitoring Mission also noted that the investigation into the fire in the Trade Union Building was still ongoing, without significant results. It next observed undue delays in the proceedings in respect of the SES officials and the police. The general conclusion by the UN Monitoring Mission was as follows:

"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."

277. The relevant parts of a similar briefing note, issued by the UN Monitoring Mission a year later, on 2 May 2020, read as follows (references and annex omitted):

"2 May 2020 marks the sixth anniversary of the violence in Odesa that claimed the lives of 40 men, 7 women and 1 boy. For the past six years, the families of the victims have been fighting for justice for the deaths of their loved ones. Justice, however, has remained elusive: in some cases, proceedings have stalled at the pre-trial investigation stage, in others at the trial stage. No individual has been held accountable for any of the 48 deaths ...

Events in the city centre

Regarding events in the city centre, neither the investigations, nor trials have progressed since 2 May 2019. The investigation has yet to establish those responsible for organizing the clashes or those that shot dead five men during these clashes. The trial of one member of the 'pro-unity' movement accused inter alia of shooting dead one member of the 'pro-federalism' movement has progressed with some 15 hearings scheduled over the past year. Following the acquittal in September 2017 of the 19 members of the 'pro-federalism' movement accused of participating in riots in

the city centre, the appeal case has made little progress. Only in February 2020, two years after the commencement of the appeal proceedings, the court ordered the compulsory attendance of those defendants who systematically failed to appear for trial and hence contributed to the delays.

Events at the Kulykove Pole square

Similarly, investigations into the events at the Kulykove Pole square have not progressed during the past year. The investigation failed to establish the identity of those who called on the crowd to move to the Kulykove Pole square from the city centre, and those who set the House of Trade Unions on fire, resulting in 42 deaths. The main criminal proceeding concerning the events at Kulykove Pole square are against three officials of the State Emergency Service for their breach of duty to rescue those trapped in the burning House of Trade Unions. The case has not moved beyond the preliminary stage due to the court's inability to notify two of the victims or failure to return the indictment to the prosecution to exclude unreachable victims listed there.

Role of police officials in both events

Criminal proceedings against police officials, charged in relation to the clashes in the city centre and riots at the Kulykove Pole square, have also not significantly progressed over the past year. The trial in the case of three police officials accused of abuse of authority or official powers that led to the death of 48 people has stalled at the preparatory stage. Just like in the case of the SES officials the delays are caused by failure of the court to duly notify all victims or to return the indictment to the prosecution to exclude unreachable victims listed there. On a positive note, the case against the former Head of the Odesa Regional Department of the Ministry of Interior accused of abuse of authority or official powers and breach of duty to rescue was prioritized by the court and some 25 hearings took place this past year.

Separately, HRMMU notes that the cases against a deputy head of Odesa regional police for abuse of power and the Head of the Odesa regional department of the State Emergency Service for his failure to rescue those who died in the fire have also not progressed as the suspects remain out of reach of the Ukrainian justice system. While the suspects are reported to be in the Russian Federation or territory temporarily occupied by it, the Russian Federation has reportedly disregarded extradition requests and requests to facilitate the Ukrainian investigations. Prosecution in absentia could be an option, should the legislation allow for the full retrial of the defendants after the delivery of the verdicts, in line with international human rights standards.

HRMMU RECOMMENDATIONS:

To the Government of Ukraine and the international community:

- The Office of the Prosecutor General to 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;
- Presidents of the relevant courts to take all appropriate measures to prioritise finalisation of criminal proceedings in the cases of killings and violent deaths perpetrated in the context of the 2 May 2014 violence in Odesa;
- Courts to duly notify all victims that are party to the proceedings, or return the indictment to the prosecution to exclude unreachable victims, in order to ensure continuation of trials without undue delays;

- Parliament to consider amending the procedure of in absentia prosecution to allow a full retrial after the perpetrator has been arrested irrespective of whether the verdict was delivered or not;
- International community to provide international legal assistance in investigations conducted by Ukrainian authorities against individuals in relation to 2 May 2014 violence, if requests of their extradition cannot be processed."

278. While the OHCHR reports on the human rights situation in Ukraine covering the period up to 31 January 2021 observed no significant progress in the investigations, its subsequent report covering the period from 1 February to 31 July 2021, noted that the investigations had progressed, partly due to the adoption on 27 April 2021 of amendments to the Code of Criminal Procedure, which had unblocked the prosecution *in absentia* of some fugitives.

279. Furthermore, on 30 April 2021 Ms Matilda Bogner, Head of the UN Monitoring Mission, issued the following press release:

7 years with no answers.
What is lacking in the investigations of the events in Odesa on 2 May 2014?

"Seven years have passed since the clashes in Odesa on 2 May 2014 – one of a number of mass assemblies marked with violence in 2014 – which claimed 48 lives (40 men, seven women and a boy). Unlike the Maidan protests, where clashes mainly took place between protesters and the police or police-backed counter-protesters or so-called 'tytushki', the clashes in Odesa occurred between people with different political views about Ukraine's future and constitutional set-up, following the change in the national Government as a result of the Maidan protests. In contrast to the Maidan protests, in Odesa, the police were passive, even negligent, failing to ensure the security of assemblies and their participants. While there are many unanswered questions regarding those tragic events in Odesa, there are three things that are crystal clear: 1) both sides of the clashes were violent; 2) police failed to ensure security and 3) all victims deserve justice and those responsible for killings and deaths should be held accountable. Today, seven years on, we provide answers to seven questions about the events and the status of investigations and prosecutions of those responsible for the violent deaths.

1. What happened on 2 May 2014 in Odesa?

After the end of the Maidan protests in Kyiv, Odesa anti-Maidan groups – critical of the newly established central Government – called for the federalization of Ukraine, while Maidan supporters opposed this.

Tensions in Odesa increased after 19 February 2014, when a group of 'pro-unity' protesters and local journalists were attacked by organized groups in front of the Odesa Regional State Administration. During March and April 2014, however, the two opposing groups held rallies in Odesa every week without significant violence.

On 2 May 2014, around 300 well-organised 'pro-federalism' supporters attacked a march of about 2,000 'pro-unity' protesters, including local residents and a large number of football fans known for their strong 'pro-unity' position, who had arrived from Kharkiv for the football game that was taking place later that day. Clashes between the two groups broke out in the city centre, lasting several hours. Both groups used firearms, resulting in six people being shot and killed (four on the 'pro-federalism' side,

and two on 'pro-unity' side). We were present on the scene and witnessed how the 'pro-federalism' groups began throwing stones and Molotov cocktails at the participants of the unity march. The situation spiralled out of control as the police failed to respond effectively to violence from both sides, even though they had been warned in advance of the high possibility of violence.

The presence of 'pro-unity' groups was overpowering in numbers and forced the 'pro-federalism' groups to scatter: some sought refuge at the top of a shopping centre close to where the clashes were taking place, others ran to a camp they had set up at Kulykove Pole square. While a large group of 'pro-unity' supporters marched towards Kulykove Pole, openly demonstrating their aggressive attitude, the police failed to respond, neither restraining the aggressive crowd nor securing the square.

When they arrived, the 'pro-unity' individuals destroyed the camp and the 'pro-federalism' supporters barricaded themselves in the House of Trade Unions. Mission's staff saw both sides throwing stones and Molotov cocktails and heard the sounds of gunshots coming from both sides, and then saw the House of Trade Unions on fire. Firefighters from the State Emergency Service (SES) responded with significant delay to numerous emergency calls made by eyewitnesses, including one of our colleagues. By the time they arrived, some forty-five minutes after the first call, forty-two people had lost their lives (34 men, 7 women and a boy). In the absence of the emergency services, we observed some 'pro-unity' supporters assisting their trapped opponents to leave the burning building. However, some of those saved from the building were then heavily beaten by the crowd.

2. What is the outcome and the present status of the investigations?

Only one person has been charged with murder. This member of a 'pro-unity' group is accused of firing a lethal shot that killed a member of the 'pro-federalism' groups during the clashes in the city centre. The alleged shooter was identified quickly and arrested on 18 May 2014, however the case has seen little progress, with multiple recusals of judges, disruption of hearings by the defendant's supporters, and 18 months lost as the prosecution revised the charges. Over the last two years, systemic problems in the judiciary, including the lack of judges and underfunding of courts, as well as COVID-19-related restrictions, have further slowed the trial.

The police have not identified those responsible for the killings of the other five men during the clashes in the city centre. Instead of focusing on identifying the perpetrators of the murders, the police concentrated its efforts on investigating and prosecuting 'pro-federalism' supporters for their participation in clashes. 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. In September 2017, the court acquitted the 19 men accused, stressing the ineffective investigation and the biased and politically-motivated prosecution of the alleged 'pro-federalism' supporters. Recently, Mykolaiv Court of Appeal considering the prosecution appeal on the verdict has placed the case on hold, while they look for some of defendants who have systematically failed to appear for hearings.

In relation to the fire in the House of Trade Unions, while there were investigations into who started the fires, there were no results and no charges have been laid against the supporters of either group. Instead, the investigation focused on the role of the police in ensuring the safety of people and preventing violence (which started in the city centre), and on the role of the SES officers and officials, who failed to adequately react to emergency calls and deploy firefighters to the scene. None of the court proceedings regarding the role of police or SES officials have been completed. The

COVID-19-related slowdown of trials has contributed to further protracting these proceedings.

3. Given the passage of time, and with so many other pressing issues in Ukraine, why is it important to keep these investigations going?

Victims deserve justice. Crimes should be prosecuted and perpetrators should be brought to account regardless of their political opinions.

In relation to the 2 May 2014 violence, Ukraine is obliged – by the regional and international human rights treaties Ukraine is a party to – to identify, prosecute and bring to account those responsible for the deaths of 48 persons. The authorities must also ensure equal and effective access for all victims and their families to justice and adequate, effective and prompt reparation for harm suffered.

When authorities fail to investigate human rights violations, people are forced to seek justice through other avenues. In a series of recent judgments by the European Court of Human Rights on the Maidan protests, Ukraine was found to be in breach of its obligation to investigate and prosecute human rights violations and was ordered to pay compensation to the victims. Such findings negatively impact Ukraine's international reputation.

The prosecution of perpetrators and remedying harm also helps to prevent the recurrence of violations. Finally, the truth uncovered during criminal proceedings can serve as a strong basis for reconciliation efforts.

4. How independent, transparent and fair are the investigations and trials?

Our monitoring of the trials related to the 2 May 2014 cases has raised particular concerns regarding the criminal proceedings involving those who participated in the clashes.

The court itself found that the investigation in the case of 19 'pro-federalism' supporters was biased. The authorities only investigated the misconduct of the 'pro-federalists' during the clashes and not the misconduct of 'pro-unity' supporters.

We have also observed a lack of security and safety for judges and other legal professionals threatened and attacked by 'pro-unity' supporters, attempting to influence their decisions or conduct in criminal cases related to the 2 May events. In order to ensure that the members of the 'pro-federalism' movement, tried for creating public disorder in the city centre, remained in detention, 'pro-unity' supporters attempted to force judges to take decisions to this end. For example, on 27 November 2015, after the trial court released five 'pro-federalism' defendants on bail. Following aggressive demands of the 'pro-unity' supporters, the prosecution appealed the judge's decision to grant bail, although it was not provided by the legislation at that time. Three days later, some 50 men prevented the appeal court judge from leaving his office until he initiated the appeal proceedings, and police did nothing to unblock the judge's room and simply watched what was happening. The same day, 'pro-unity' supporters also refused to allow the trial court judges, who had granted the defendants' release on bail, to leave the courtroom until they signed resignation letters, which, however, they withdrew the next day. In the case of the 'pro-unity' supporter accused of killing a supporter of the 'pro-federalism' movement, other members of the 'pro-unity' movement violently disrupted hearings and verbally abused judges at hearings in order for the case against him to be dropped. The police again did not ensure security of the courtrooms or investigate the interference into justice.

Members of 'pro-unity' groups also threatened to kill a lawyer representing 'pro-federalism' supporters. Later, as a result of a clash outside the court with a mob of 'pro-

unity' supporters, the lawyer sustained a fractured finger. Even though some of these incidents occurred in the presence of the police, were caught on camera or perpetrators were identified by victims or witnesses of the attacks, the respective investigations simply remained open without any tangible progress. Impunity for such attacks has understandably affected judges and lawyers' sense of security, thereby jeopardizing their independence.

A broader sense of intimidation and impunity was also created by attacks against relatives. 'Pro-unity' groups attacked relatives of the victims of the fire at the House of Trade Unions during commemoration events in 2014-2016. The attacks, combined with the police's failure to ensure security of the commemoration and to investigate such incidents, create an impression that 'pro-federalism' supporters are less protected than others in Odesa. The lack of a sense of security, of visible progress and of broad public demand for justice in these cases has led to victims' relatives losing hope and interest in participating in the court hearings, which in many cases proved the only effective means to ensure some progress toward justice.

5. Why are the 2 May 2014-related trials not progressing?

Trials fail to progress mainly due to a lack of political will. Arguments about the complexity of the case or difficulties in getting victims to attend the trials cannot be excuses seven years after the events. The lack of security for judges has also contributed to their reluctance to adjudicate such cases. This can be seen in the case against the 19 'pro-federalism' supporters, which was passed between all four district courts of Odesa before finally being sent to a court outside Odesa three years after the case was referred to trial. Similarly, between June 2015 and January 2017, the case against the only 'pro-unity' supporter was passed between all four district courts in Odesa, which resulted in a further delay in the trial of more than a year and a half.

6. How can the fugitives be brought to justice?

Several individuals prosecuted in relation to the 2 May events have managed to flee abroad, to Crimea, Ukraine, occupied by the Russian Federation, or to territory controlled by self-proclaimed 'republics' in eastern Ukraine and remain out of reach of Ukrainian justice. They include high level officials from the police and the SES, as well as 'pro-federalism' supporters. In October 2014, Parliament introduced a procedure for *in absentia* prosecution, which allows for the prosecution of fugitives in their absence.

However, under the Criminal Procedure Code, those convicted *in absentia* are not entitled to an in-person retrial of their case, which is required by international human rights standards. Countries they flee to may, therefore, lawfully refuse to extradite them to Ukraine. Unless amendments are made to the Criminal Procedure Code to rectify this, all efforts taken to prosecute perpetrators of human rights violations in Ukraine will be in vain, for the verdicts delivered *in absentia* will likely be unenforceable.

7. Can we hope for any progress?

In order to avoid further delays in the 2 May trials, courts should grant them priority status. Judges and parties to the proceedings, including prosecutors, lawyers and relatives of victims, should enjoy a sufficient level of security, including in the courtrooms, to allow the trials effectively to proceed. In order to ensure the transparency and impartiality of ongoing investigations, the Office of the Prosecutor General should consider transferring them from Odesa to Kyiv.

Moreover, the lack of progress in the appeal proceedings against 19 'pro-federalism' supporters for the past three years due to the failure of the court and police to compel

attendance of the defendants, makes us wonder whether we will ever find out who was responsible for the clashes that eventually ended with the loss of 48 human lives.

Seven years on, it may seem that the obstacles are insurmountable and no further results could be expected. But progress is possible. We have seen in the past year, for example, some significant advancements in the investigation of the Maidan events in Kyiv, including the identification of individuals now charged with causing the deaths of protesters and a person, who died in the fire at the Party of Regions office. Moreover, history is strewn with examples of prosecutions that have happened even decades after grave human rights violations took place. Trials *in absentia* are also possible. Although the punitive aspect of such trials may be disputed, they can help to bring justice to victims, allow for compensation, foster reconciliation, create a historical record and deter future crimes.

Ultimately, what is needed is the political will to ensure justice in these cases. The seventh anniversary is the perfect occasion for the authorities to take firm action to move forward on accountability in relation to the 2 May 2014 events and to show that the rule of law is a guiding principle in Ukraine, rather than a biased system based on political positions.

The courts should prioritize these cases to demonstrate that accountability can be achieved, irrespective of the affiliation of the alleged perpetrators. Parliament should also amend the Criminal Procedure Code to enable those who fled Ukraine to be tried *in absentia* in full compliance with their right to retrial, thereby allowing for their future extradition.

All victims deserve justice and Ukraine deserves the rule of law."

V. EUROPEAN PARLIAMENT RESOLUTIONS

280. On 17 April 2014 the European Parliament adopted a resolution on Russian pressure on Eastern Partnership countries and in particular destabilisation of eastern Ukraine (2014/2699(RSP)). The relevant extracts read as follows:

"D. whereas any further escalation of violent destabilisation in eastern and southern Ukraine risks being used by Russia as a false pretext for further aggression by military means, prevention of the presidential elections, and forced federalisation as a precursor to the partition of Ukraine;

...

1. Condemns in the strongest possible terms the escalating destabilisation and provocations in eastern and southern Ukraine; rejects any preparation for illegal 'Crimea-like' referendums; warns that the increasing destabilisation and sabotage caused by pro-Russian armed, trained and well-coordinated separatists led by Russian special forces could be used as a false pretext for Russia to intervene militarily, prevent the presidential elections and force federalisation as a precursor to the partition of Ukraine;

...

4. Stresses that no attacks, intimidation or discrimination whatsoever against Russian or ethnic Russian citizens or other minorities have been reported recently in Ukraine, as confirmed by credible international monitors such as the UN, the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe; ..."

281. On 23 November 2016 the European Parliament adopted a resolution (no. 2016/2030(INI)) on EU strategic communication to counteract propaganda against it by third parties, the relevant parts of which read as follows (bold and italics in the original text):

"The European Parliament,

...

H. whereas the propaganda and the intrusion of Russian media is particularly strong and often unmatched in the countries of the Eastern neighbourhood; whereas national media in these countries are often weak and not able to cope with the strength and the power of Russian media;

Recognising and exposing Russian disinformation and propaganda warfare

...

8. Recognises that the Russian Government is employing a wide range of tools and instruments, such as think tanks and special foundations (e.g. Russkiy Mir), special authorities (Rossotrudnichestvo), multilingual TV stations (e.g. RT), pseudo news agencies and multimedia services (e.g. Sputnik), cross-border social and religious groups, as the regime wants to present itself as the only defender of traditional Christian values, social media and internet trolls to challenge democratic values, divide Europe, gather domestic support and create the perception of failed states in the EU's eastern neighbourhood; stresses that Russia invests relevant financial resources in its disinformation and propaganda instruments engaged either directly by the state or through Kremlin-controlled companies and organisations; underlines that, on the one hand, the Kremlin is funding political parties and other organisations within the EU with the intent of undermining political cohesion, and that, on the other hand, Kremlin propaganda directly targets specific journalists, politicians and individuals in the EU;

9. Recalls that security and intelligence services conclude that Russia has the capacity and intention to conduct operations aimed at destabilising other countries; points out that this often takes the form of support for political extremists and large-scale disinformation and mass media campaigns; notes, furthermore, that such media companies are present and active in the EU;

...

11. Argues that Russian strategic communication is part of a larger subversive campaign to weaken EU cooperation and the sovereignty, political independence and territorial integrity of the Union and its Member States; urges Member State governments to be vigilant towards Russian information operations on European soil and to increase capacity sharing and counterintelligence efforts aimed at countering such operations;

...

13. Is seriously concerned by the rapid expansion of Kremlin-inspired activities in Europe, including disinformation and propaganda seeking to maintain or increase Russia's influence to weaken and split the EU; stresses that a large part of the Kremlin's propaganda is aimed at describing some European countries as belonging to 'Russia's traditional sphere of influence'; notes that one of its main strategies is to circulate and impose an alternative narrative, often based on a manipulated interpretation of historical events and aimed at justifying its external actions and geopolitical interests; notes that

falsifying history is one of its main strategies; in this respect, notes the need to raise awareness of the crimes of communist regimes through public campaigns and educational systems and to support research and documentation activities, especially in the former members of the Soviet bloc, to counter the Kremlin narrative; ...

...

47. Expresses concern at the use of social media and online platforms for criminal hate speech and incitement to violence, and encourages the Member States to adapt and update legislation to address ongoing developments, or to fully implement and enforce existing legislation on hate speech, both offline and online; argues that greater collaboration is needed with online platforms and with leading internet and media companies;"

THE LAW

I. JOINDER OF THE APPLICATIONS

282. Having regard to the common factual and legal background of the applications under examination, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

II. ROLE OF THE COURT

283. The Court emphasises that its task, as defined by Article 19 of the Convention, is to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto". This means that in all cases before the Court the sole issue of relevance is the State's international responsibility rather than the individual responsibility of any specific person or domestic institution as such (see, *mutatis mutandis*, *Assanidze v. Georgia* [GC], no. 71503/01, § 146, ECHR 2004-II, *S.E. v. Serbia*, no. 61365/16, § 86, 11 July 2023, and *I.V. v. Estonia*, no. 37031/21, § 102, 10 October 2023).

284. There are no exceptions to the above rule, and in the present cases the Court's role is limited to the examination of Ukraine's international responsibility regardless of the fact that some of the wrongdoings, for which the Ukrainian Government is considered responsible under the Convention (see *Assanidze*, cited above, § 146), are attributable to its former local officials who in the meantime fled Ukraine to the Russian Federation, became Russian citizens, and, in case of Mr Bodelan (the former Head of the SES Main Department in the Odesa Region), built career there against the background of the Russian large-scale military invasion of Ukraine (see, in particular, paragraphs 159, 161, 186, 205 and 227, as well as footnote 62 above).

285. While keeping in mind the limits to its role as indicated above, the Court has also held that it would be artificial to examine the facts of the case without considering their general context (see, mutatis mutandis,

Khlaifia and Others v. Italy [GC], no. 16483/12, § 185, 15 December 2016, and *Khlebik v. Ukraine*, no. 2945/16, § 71, 25 July 2017).

286. Accordingly, in examining the facts of the present cases, the Court will give due consideration to their general context consisting, in particular, in the established involvement of the Russian Federation in the events in Crimea and the east of Ukraine (see paragraphs 8 and 9 above).

III. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

287. The twenty-five applicants whose next of kin had died during the events of 2 May 2014 in Odesa (see Appendix I) complained under Article 2 of the Convention that the authorities had failed to safeguard their relatives' lives. The three applicants, who had sustained burns and other injuries during the fire in the Trade Union Building on that date[67], complained, with the reference to Article 3 of the Convention, that the State had failed to protect them from a life-threatening situation. All the applicants complained, relying on Article 2 or 3, as well as Article 13 of the Convention, that there had been no effective domestic investigation into the matter.

288. The Court, being master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that the issues raised should be examined solely from the perspective of Article 2 (for the Court's case-law on the applicability of Article 2 to life-threatening situations, see, for example, *Makaratzis v. Greece* [GC], no. 50385/99, § 55, ECHR 2004-XI; *Alkın v. Turkey*, no. 75588/01, § 29, 13 October 2009; *Kotelnikov v. Russia*, no. 45104/05, § 98, 12 July 2016; *Kolyadenko and Others v. Russia*, nos. 17423/05 and 5 others, § 155, 28 February 2012; and *Daraibou v. Croatia*, no. 84523/17, § 86, 17 January 2023; and, for the case-law on the examination of the issue of the effectiveness of the domestic investigation under Article 2 rather than Article 13 of the Convention, see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 220, 25 June 2019, and *Yengibaryan and Simonyan v. Armenia*, no. 2186/12, § 102, 20 June 2023).

289. Article 2 reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;

[67] Mr Didenko, Mr Dmitriyev and Mr Gerasymov (application no. 59229/17).

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Admissibility

1. The parties' submissions

290. The Government submitted that all the applications should be rejected as premature, given that the relevant investigations were still ongoing.

291. In addition, the Government submitted that certain applicants could not be regarded as having exhausted domestic remedies for the following reasons. They argued that some applicants had not applied for the procedural status of victims in particular sets of criminal proceedings[68], while others had failed to lodge a civil claim in criminal proceedings. They also observed that Mr Didenko, Mr Dmitriyev and Mr Gerasymov (application no. 59339/17) had not complained to the prosecution authorities of their alleged ill-treatment by law-enforcement officials.

292. The applicants disagreed. They submitted that they could not be expected to wait for the completion of the obviously ineffective investigations, which had been ongoing for many years without any tangible progress.

293. The applicants further pointed out that they had been recognised as victims in all the main sets of criminal proceedings of which they were aware. They emphasised that they had shown a genuine interest in the related investigations, including by making statements, challenging certain investigator's decisions or omissions, seeking access to case files and so on. However, the applicants observed that dozens of criminal investigations had been emerging, either by way of a new investigation being launched or the existing cases being joined or separated, without their knowledge. Accordingly, the applicants argued that they could not be reproached for not seeking the procedural status of victim in each and every set of proceedings.

2. The Court's assessment

(a) Preliminary remark

294. The Court notes at the outset that, contrary to the Government's submissions, Mr Didenko, Mr Dmitriyev and Mr Gerasymov (application no. 59339/17) have never alleged that they were ill-treated by law-enforcement officials. The Court therefore considers that the

[68] The Government referred to cases nos. 0186, 1219 and 2821 (see paragraphs 146-156, 157-161 and 162-166 above).

Government's related plea of inadmissibility stemmed from a misinterpretation and will not address it.

(b) General case-law principles

295. The relevant general principles as regards the exhaustion of domestic remedies are set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). One of those principles implies the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (ibid., § 76).

296. The Court has recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *İlhan v. Turkey* [GC], no. 22277/93, § 59, ECHR 2000-VII, and, for a more recent reference, *Durdaj and Others v. Albania*, nos. 63543/09 and 3 others, § 250, 7 November 2023).

297. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see *Vučković and Others*, cited above, § 77).

298. If there are a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *O'Keeffe v. Ireland* [GC], no. 35810/09, §§ 109 and 111, ECHR 2014 (extracts)).

(c) Application of the above principles to the present cases

(i) Failure to apply for procedural status of victim in all sets of proceedings

299. In so far as the Government referred to the failure of some applicants to apply for the procedural status of victims in particular sets of proceedings, the Court notes that, according to the information in its possession, all the applicants had this status in at least one set of related criminal proceedings. In any event, the Court agrees with the applicants' argument that, given the multitude of interrelated criminal investigations, it would have been excessively formalistic to expect them to request victim status in every single case, even assuming, which is far from obvious, that they were aware thereof.

300. Accordingly, the Court dismisses the Government's argument in this regard.

(ii) Failure to lodge a civil claim in criminal proceedings

301. The Court notes that one of the applicants' grievances was that, even where the criminal investigations had reached the trial stage, the proceedings had stagnated for many years at first instance, with the prospect of a final judicial decision remaining remote. The Government did not explain how, under such circumstances, a civil claim in those proceedings could be viewed as an effective remedy.

302. Furthermore, the Court has held that civil proceedings, which are undertaken on the initiative of the next of kin, not the authorities, and which do not involve the identification or punishment of any alleged perpetrator, cannot be taken into account in the assessment of the State's compliance with its procedural obligations under Article 2 (see *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 165, ECHR 2011).

303. It follows that this argument of the Government should be dismissed too.

(iii) Ongoing criminal proceedings

304. The Court next notes that the Government's plea of inadmissibility on the grounds of the ongoing investigations is closely related to the merits of the applicants' complaints regarding the alleged ineffectiveness of the investigations.

305. The Government's objection must therefore be joined to the merits of the applicants' complaint under the procedural aspect of Article 2 of the Convention (compare *Nika v. Albania*, no. 1049/17, § 100, 14 November 2023).

306. These complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Substantive limb of Article 2 of the Convention

(a) The parties' submissions

(i) The applicants

307. The applicants alleged that the State had failed to comply with its positive obligation to protect them from a life-threatening situation (as regards Mr Didenko, Mr Dmitriyev and Mr Gerasymov – application no. 59339/17) and to safeguard the lives of their next of kin (the remaining applicants).

308. The applicants argued that the State had been aware of the existing risks, regard being had to the serious political and social tensions in the country in the months preceding the events, the past examples of violent confrontations between Maidan supporters and opponents and the presence in the region of a large number of armed and aggressive people willing to defend their views by using force. However, no measures had been taken to manage those risks and prevent any life-threatening situations.

309. Moreover, the applicants maintained that, as admitted by the domestic authorities themselves, they had been informed about the possibility of mass disorder on 2 May 2014 but had chosen simply to disregard that information.

310. The applicants further deplored the unpreparedness and passivity of the police during the clashes, the delay in deploying fire brigades to the Trade Union Building after the fire had broken out and the failure to ensure a safe evacuation.

(ii) The Government

311. The Government did not submit any observations on the merits of the applicants' complaint under the substantive limb of Article 2 of the Convention. At the same time, they made some remarks of relevance, in particular, in their statement of facts.

312. The Government contended that the events of 2 May 2014 were not to be regarded as being limited to the clashes between activists, but rather as part of the Russian aggression against Ukraine and its plans to further destabilise the situation in the southern regions of the country.

313. The Government referred to a large-scale disinformation campaign carried out by unidentified individuals, apparently with the support of former senior State officials who could not accept their loss of power. In particular, false information had allegedly been spread about the imminent arrival in Odesa of radical nationalist groups from the western regions of the country in order to impose their views on the local population.

314. According to the Government, those interested in discrediting the new Ukrainian government used the announced pro-unity march as an opportune moment for provoking mass disorder with civilian killings, for which they intended to blame Maidan activists.

315. The Government noted, with reference to the findings reached within criminal investigations in respect of the police and the SES (see paragraphs 144-208 above), that the police authorities had indeed disregarded the intelligence information about the risk of mass riots on 2 May 2014 in Odesa and that they had not taken all the necessary measures to ensure order and prevent offences on the streets and in other public places. Nor had there been any efforts to reinforce, quantitatively or qualitatively, the police forces available on that date to maintain public order in the city.

316. The Government next observed that, once the clashes had started, no sufficient measures had been taken to stop the violence. There had been no adequate coordination between the regional and the city police. Police presence on the ground had been insufficient and the policemen had not received any orders to carry out arrests. The law-enforcement officers who had eventually been deployed from the stadium to the city centre had not had the appropriate protective equipment or means of restraint. Furthermore, no order had been given for the deployment of reserve police resources.

317. The Government also submitted that, after the fire had broken out in the Trade Union Building, the police and the SES officials, although aware that a large number of people were trapped inside and having all the necessary powers and means to rescue them, had not taken rescue measures in time, which had led to grave consequences.

(b) The Court's assessment

(i) General case-law principles

318. The Court reiterates that the first sentence of Article 2, which ranks as one of the most fundamental provisions in the Convention and also enshrines one of the basic values of the democratic societies making up the Council of Europe, requires the State not only to refrain from the "intentional" taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, among many other authorities, *Nicolae Virgiliu Tănase*, cited above, § 134, and *Kurt v. Austria* [GC], no. 62903/15, § 157, 15 June 2021).

319. Such a positive obligation may apply not only to situations concerning the requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act, but also in cases raising the obligation to afford general protection to society (see, for example, *Vardosanidze v. Georgia*, no. 43881/10, § 53, 7 May 2020). In the latter circumstances, the Court has considered this positive obligation to arise in various specific contexts, such as the following: management of dangerous activities (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII); mitigation of natural hazards (see *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, § 137, ECHR 2008 (extracts)); ensuring road safety (see *Nicolae Virgiliu Tănase*, cited above, § 135); protection of people's safety in public spaces (see *Ciechońska v. Poland*, no. 19776/04, § 69, 14 June 2011); assessment of a prisoner's dangerousness to society, in particular, when considering any alternative measures to imprisonment or deciding on eligibility for a prison leave (see *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 69-79, ECHR 2002-VIII); and combatting terrorism (see *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 482, 13 April 2017).

320. The above list is not exhaustive. The positive obligation will arise for the State in any context involving potential risk to human lives (see, *mutatis mutandis*, *R.Š. v. Latvia*, no. 44154/14, § 79, 8 March 2018).

321. While the specific preventive measures required in each situation of risk hinge on the origin of the threat and the extent to which it is susceptible to mitigation, the duty incumbent on the authorities is, at its most general level, to do what can reasonably be expected of them to avert the risk, and that depends on the entirety of the circumstances of each case (see *Ribcheva and Others v. Bulgaria*, nos. 37801/16 and 2 others, § 161, 30 March 2021, with further references).

322. The duties of the domestic authorities entail above all the primary obligation to have in place an appropriate set of preventive measures geared to ensuring public safety. This implies the adoption and implementation of a legislative and administrative framework designed to provide effective deterrence against threats to the right to life. In this regard, the Court has emphasised that the States' obligation to regulate must be understood in a broader sense, which includes the duty to ensure the effective functioning of that regulatory framework (see *Kotilainen and Others v. Finland*, no. 62439/12, § 66, 17 September 2020, and the references therein).

323. The Court has considered that where a Contracting State has adopted an overall legal framework and legislation tailored to the protective requirements in the specific context, matters such as an error of judgment on the part of an individual player, or negligent coordination among professionals, whether public or private, could not be sufficient of themselves to make a Contracting State accountable from the standpoint of its positive obligation under Article 2 of the Convention to protect life (ibid., § 68).

324. The Court has also held that the sphere of application of Article 2 cannot be interpreted as being limited to the time and direct cause of the individual's death. Chains of events that were triggered by a negligent act and led to loss of life may also fall to be examined under that provision (see *Alhowais v. Hungary*, no. 59435/17, § 112, 2 February 2023).

325. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see *Kurt*, cited above, § 158).

326. The State's duty to safeguard the right to life must also be considered to extend to the provision of emergency services where it has been brought to the notice of the authorities that the life or health of an individual is at risk on account of injuries sustained as a result of an accident. This also involves setting up of an appropriate regulatory framework for rescuing persons in distress and ensuring the effective functioning of such a framework (see *Furdik v. Slovakia* (dec.), no. 42994/05, 2 December 2008).

327. Lastly, the Court notes that it must be cautious about revisiting events with the wisdom of hindsight. This means that a given case in which a real and immediate risk materialised must be assessed from the point of view of what was known to the competent authorities at the relevant time (see *Kurt*, cited above, § 160).

(ii) Application of the above principles to the present cases

(α) Introductory remarks

328. The present cases concern the mass disorder in Odesa on 2 May 2014, during which the next of kin of nine applicants were killed by firearm shots in the street clashes, whereas the next of kin of sixteen further applicants lost their lives as a result of the fire in the Trade Union Building and three remaining applicants survived that fire (see paragraphs 61 and 74 above, as well as Appendix I). Insofar as the Government may be understood as drawing attention to the fact that the role played by the Russian Federation in the events at issue ran contrary to the rights protected by the Convention, the Court observes that, while its assessment of the facts of the case will undoubtedly take into account the information about that role, its task in the present case is limited to examining the applicants' complaints, which concern the acts and omissions of the Ukrainian authorities (see also paragraphs 283-286 above). Regarding Ukraine, although it has never been alleged that State agents shot the applicants' relatives or set fire to the Trade Union Building, this situation does not necessarily exclude the responsibility of the Government for what happened. The Court is therefore called upon to determine whether the facts at issue engage the State's positive obligation under Article 2 of the Convention to protect the applicants' or their relatives' lives and, if so, whether that obligation was complied with.

329. The Court notes in this connection that the applicants' complaints are not limited to an isolated incident but rather concern a complex chain of events involving several distinct alleged failures by State authorities: namely, the failure to prevent violence, the failure to stop violence and the failure to ensure timely rescue measures in situation of emergency. The Court will analyse each of those allegations separately.

(β) Failure to prevent violence

330. The Court's assessment of the preventive measures expected of the State in various situations of risk implies first and foremost analysis of the origin of the threat and the extent to which it is susceptible to mitigation (see paragraph 321 above).

331. While the existence of the risk of violence in the present cases at the material time has never been disputed by the parties, the analysis of its origin and the authorities' abilities to avert it raises several complex issues.

332. The Court notes that, by 2 May 2014, Odesa had been living a several-month period of social tensions, including the violent dispersal of Maidan protests by the police in late November 2013, the attack on Maidan supporters on 19 February 2014 by an organised and well-equipped group of private individuals, with the police passively observing the events, and the unsuccessful attempt of pro-Russian protesters to storm the Odesa Regional Council building on 3 March 2014 to force through decisions in favour of federalisation and a local referendum (see paragraphs 10, 11 and 19 above). Both Maidan supporters and opponents had so-called self-defence units possessing some protective equipment and arms (see paragraphs 13 and 14 above). While violent incidents had overall remained rare in Odesa (see paragraph 21 above), the situation was obviously volatile and implied a constant risk of escalation.

333. The Court takes note of the Government's allegation about the threat of destabilisation of the situation in the southern regions of Ukraine in general and in Odesa in particular, coming from the Russian Federation and the former Ukrainian high-level State officials who had lost their power as a result of the Maidan revolution. According to the Government, the nature of that threat consisted in provocations of mass disorder with civilian casualties, which were to be falsely attributed to Maidan activists and thus were expected to discredit the new Ukrainian government (see paragraphs 312-314 above). Similar concerns had been expressed by the Security Service of Ukraine at the material time, which referred to "an increasing number of attempts to create clashes and instigate separatist unrest in [the] south-east Ukraine, in particular in Odesa" (see paragraph 254 above).

334. The Court has already found established the heavy involvement of the Russian Federation in the events leading up to the so-called "referendum" in Crimea, as well as its various support to the separatist entities in the east of Ukraine (see paragraphs 8-9 above). The Court has also taken note of the often covert nature of that involvement (see, in particular, *Ukraine and the Netherlands v. Russia*, cited above, § 611).

335. In view of the considerable strategic value of Odesa[69] and the aforementioned conduct of the Russian Federation in Crimea and eastern Ukraine, the Court does not consider the Government's allegation about the threat of violent provocations in Odesa originating from the Russian Federation's authorities as being devoid of any basis. In any event, an allegation of this kind can hardly be expected to be supported by conclusive evidence, especially given the covert nature of the alleged involvement.

336. What is, however, supported by various publicly available video evidence is that the pro-Russian "Kulykove Pole" movement in Odesa relied

[69] As noted, in particular, by the PACE Committee on the Honouring of Obligations and Commitments by the CoE Member States in its information note of 25 August 2014 (see paragraph 254 above).

heavily on aggressive and emotional disinformation and propaganda messages about the new Ukrainian government and Maidan supporters voiced by Russian authorities and mass media (see, in particular, paragraph 16 above). The need for recognising and exposing Russian disinformation and propaganda warfare has been noted by the Court, with the reference to the relevant resolution of the European Parliament, in the case *Kirkorov v. Lithuania* ((dec.), no. 12174/22, § 61, 19 March 2024). The Court considers that such disinformation and propaganda might have had an impact on the tragic events in the present cases too. It notes in this connection the following undisputed fact. The 2 May 2014 clashes in Odesa started with an attack by a group of anti-Maidan activists on the pro-unity march on the pretext that the latter had been envisaging destroying the "Kulykove Pole" tent camp, even though the pro-unity protesters had not deviated from their planned route and had not taken a single step in the direction of Kulykove Pole (see paragraphs 24 and 45 above).

337. The Court also finds it relevant to note that, as established by the Ukrainian authorities (see paragraph 161 above) and confirmed, at least to some extent, by Mr Dmitriyev's (application no. 59339/17) submissions (see paragraph 15 above) and the publicly available video evidence (see paragraph 53 above), one of the high-ranking regional police officials, Mr Fuchedzhy, who had been directly involved in the decision-making process before and during the events and who had fled to Russia thereafter (see, in particular, paragraphs 27, 75, 148, 150 and 157 above), at least had been providing various support to the anti-Maidan movement in Odesa or at most had conspired with anti-Maidan activists in organising mass disorder. Furthermore, although the Maidan revolution had brought about changes in the domestic authorities at the high level (see paragraph 7 above), the staff of the police who had already passively observed the violence against Maidan supporters and journalists, in particular, on 19 February 2014 (see paragraph 11 above), remained the same. Under such circumstances, the risk of violent clashes might have stemmed, inter alia, from the possible collusion between the police and anti-Maidan activists, and the ability of the new Ukrainian government to manage that risk was therefore considerably limited.

338. Bearing in mind all the aforementioned challenges, the Court notes that the duty incumbent on the authorities was, at its most general level, to do what could reasonably be expected of them to avert the risk of violence (see paragraph 321 above).

339. As part of general risk management in the context of social tensions (see, in particular, paragraph 332 above), it was the State's primary duty to have in place regulatory and administrative frameworks designed to provide effective deterrence against threats to the right to life, notably by providing for an appropriate and functional set of preventive measures geared to ensuring public safety (see paragraph 322 above).

340. The Court is aware of the existence of the order of the Head of the Odesa Regional Police Department of 17 April 2014 providing for such preventive measures (see paragraph 23 above). However, in the absence of a copy of that document in the case file materials or any other details, it cannot evaluate the adequacy or effectiveness of the measures in question.

341. The Court next notes that, as admitted by the domestic authorities, on 28 April 2014 the SSU obtained intelligence about the possible risk of mass clashes and disorder during the planned pro-unity march, which it immediately communicated to all the authorities concerned (see paragraph 26 above). The existence of such a risk was also brought to the attention of the Public Relations Unit of the MoI Main Department in the days that followed (see paragraph 29 above). Furthermore, the Cybercrime Unit of the aforementioned authority had identified social media posts, apparently written by anti-Maidan activists, concerning possible mass riots on 2 May 2014 (ibid.).

342. The Court considers that the information which became known to the authorities was sufficient to confirm the existence of a real and immediate risk to life, especially given that they were also aware of the time, meeting place and planned route of the pro-unity march, as well as the location of the anti-Maidan tent camp (see paragraphs 15 and 24 above). While before that the authorities had only been required to ensure general regulatory and administrative preventive frameworks, from that point on their obligation was also to put in place adequate preventive and protective operational measures with a view to ensuring enhanced security in the specified public areas, early detection and deterrence of any attempts of provocations, as well as ensuring adequate preparedness of law-enforcement forces for neutralising any such provocations as soon as possible and with minimal risk to life.

343. The Government did not bring to the Court's knowledge a single example of any such preventive or protective operational measures taken. On the contrary, they admitted, with reference to the findings of the domestic investigations, that the police authorities had ignored the available intelligence and the relevant warning signs (see paragraph 315 above) and had prepared for an ordinary football match on 2 May 2014. No efforts whatsoever had been made to reinforce, quantitatively or qualitatively, the police forces available on that date to maintain public order in the city (ibid.).

344. Nor is the Court aware of any meaningful efforts by the authorities to prevent the clashes after they had been, or should have been, alerted to their imminence by the events on 2 May 2014. Although the police had been observing the anti-Maidan activists' gathering from its outset, by the time those activists' number had grown to about 300 persons and they had started moving in the direction of the pro-unity march, the police presence had evolved from ten to forty officers, who were merely accompanying the anti-Maidan protesters (see paragraphs 37, 42 and 43 above).

345. The Court takes note of the lack of clarity as to whether local prosecutors, law enforcement and military officers, who had a meeting with the Deputy Prosecutor General on 2 May 2014, were able to follow the events without delay. According to one version of events, their telephones were switched off until 4 p.m. (that is, after the clashes had already started), while, according to another version of events, the meeting had finished by 2.50 p.m. and some officers had been contactable by telephone (see paragraph 35 above). Whichever version is accurate, the Court finds the attitude and passivity of those officials inexplicable. It recalls that the meeting in question was dedicated to the issue of the existing public order challenges in the region (ibid.). Accordingly, cutting any links with the outside world for hours on the day when, according to the intelligence, there was a risk of violent clashes in the city, was hardly understandable. Similarly, there seemed to be no excuse to the passivity of the officials in question if they had indeed received information about the ongoing events.

346. In sum, although the Ukrainian authorities' abilities to prevent the violent clashes, which took place in Odesa on 2 May 2014, had undoubtedly been limited owing to the particularities of the origin of the threat and the situation with the local police at the material time, it has not been shown to the Court that they did everything that could reasonably be expected of them to avert the real and immediate risk to life.

347. It follows that there has been a violation of Article 2 of the Convention under the substantive limb in this regard.

(γ) Failure to stop violence

348. The Court notes that the passivity of the police during the clashes is an established fact, confirmed by extensive evidence and not disputed by the parties (see, in particular, paragraphs 50, 310 and 316 above). Indeed, the police remained passive when the anti-Maidan activists approached and attacked the pro-unity march for no obvious reason (see paragraph 45 above). Nor did the police react to the first fatal firearm injury inflicted on a pro-unity activist, the son of Mr Ivanov and Ms Ivanova (application no. 59531/17). Moreover, a pro-Russian activist was seen shooting in the direction of pro-unity protesters while standing next to the police and subsequently left the scene in the same vehicle as a senior regional police official (see paragraphs 49-53 above). Furthermore, some police officers were wearing red adhesive tape on their arms similar to that worn by certain anti-Maidan protesters (see paragraph 48 above).

349. In the Court's opinion, the failure of the police to manifest any meaningful attempt to stop the initial wave of violence directed against the pro-unity protesters, together with clear indications of possible collusion between the police and the anti-Maidan activists, was one of the reasons, if not the main one, for the wave of violence in reply, when the enraged Maidan supporters were determined to take revenge.

350. Furthermore, it appears that no special contingency plan for mass riots was ever activated after the clashes started (see paragraphs 27, 28, 151, 164, 238-244 and 248 above). As a result, no reserve police forces were involved.

351. While it was decided at some point to relocate 120 policemen from the stadium to the city centre, it could hardly have made any difference, given that they had no protective equipment and some of them had no means of restraint (see paragraph 39 above).

352. As also admitted by the Government, there was a lack of coordination between the regional and city police.

353. The Court considers that the negligence attributable to State officials and authorities in the present cases goes beyond an error of judgment or carelessness on the part of individual players. By passively observing representatives of one political camp start killing those of the opposing camp, the police not only failed in their obligation to stop the violence, but also became partly responsible for the subsequent violence that claimed more lives, including the fire casualties.

354. There has therefore been a violation of Article 2 of the Convention under the substantive limb in this regard too.

(δ) Failure to ensure timely rescue measures

355. The Court emphasises that events relating to emergency and rescue operations come under the respondent State's positive obligation under Article 2 of the Convention to take appropriate steps to safeguard the lives of those within its jurisdiction (see paragraph 326 above and, also, *Alhowais*, cited above, § 118).

356. It is not for the Court to speculate whether the emergency and rescue measures might have saved the lives of the applicants' relatives trapped in the fire in the Trade Union Building or to what extent they might have reduced the risks to the survivors' lives. The Court's task is rather to determine whether the authorities did what could reasonably be expected of them.

357. By the Government's own admission (see paragraph 317 above), that was not the case.

358. According to the applicable regulations, the adequacy of which is not in dispute, the SES was obliged to deploy two fire engines to Kulykove Pole as soon as the first telephone calls had been received about the tents having caught fire at 7.31 p.m. (see paragraph 182 above). After the aggravation of the situation with the outbreak of the fire in the Trade Union Building, the required firefighting efforts consisted in deployment of six fire engines, a turntable ladder, a hose layer and a ventilation truck (ibid.). None of that was done, however, until some forty minutes after the first telephone calls to the SES dispatch centre, even though numerous eyewitnesses kept calling the emergency service, its then Head, Mr Bodelan, was present at the scene and observed the events in person, and the fire brigade was located only

650 metres away (see paragraphs 64-69 above). The only reason for the delay was the instruction given by Mr Bodelan to his subordinates not to do anything without his explicit order (see paragraph 65 above). The justification given by him for that decision in the course of the internal inquiry (see paragraphs 65 and 182 above) does not stand up to scrutiny. As regards his reference to the earlier hijacking of a fire engine and the risk of it happening again, it is noteworthy that, by the time of the events, the protesters had already returned the vehicle (see footnote 32 above). In so far as Mr Bodelan referred to the supposed risk to firefighters' lives, nothing prevented him from ensuring that all the requisite equipment and staff were as close as possible and ready to intervene. However, the first fire engines did not arrive at the scene until 8.09 p.m. (see paragraph 69 above). Although the firefighters reportedly faced obstruction and threats from some aggressive activists (ibid.), there is nothing in the extensive publicly available photographic and video evidence to suggest that they were considerably delayed in carrying out their mission once at the scene.

359. The Court also notes the continued inactivity of the police, who failed to ensure a prompt and safe evacuation from the Trade Union Building.

360. In sum, the Court considers that the State failed to ensure timely rescue measures, contrary to its positive obligations under Article 2.

361. This leads the Court to find another violation of this provision under its substantive limb.

(ε) Conclusion

362. The Court concludes that the respondent State has breached Article 2 of the Convention under its substantive limb on account of its failure to do everything that could reasonably be expected of it in order to prevent the violence in Odesa on 2 May 2014 and to stop that violence after its outbreak, as well as its failure to ensure timely rescue measures for those trapped in the fire in the Trade Union Building.

2. Procedural limb of Article 2 of the Convention

(a) The parties' submissions

(i) The applicants

363. The applicants alleged that the State had failed to comply with its procedural obligations under Article 2. They submitted, in particular, that the domestic investigation could not be regarded as effective, since those responsible for the deaths of their relatives (or for placing the applicants in a life-threatening situation in the case of Mr Didenko, Mr Dmitriyev and Mr Gerasymov (application no. 59339/17)) had never been properly identified, let alone brought to justice.

364. The applicants further alleged that the effectiveness of the domestic investigations had been undermined by serious omissions and deficiencies,

notably the failure to secure and collect all the evidence in a timely manner. Furthermore, they argued that there had been inexplicable delays in the investigations, which had sometimes enabled suspects to abscond.

365. The applicants also argued that the length of the investigations had been excessive. They observed that the trial had been completed in only one case, that of Mr Fuchedzhy. However, even in that case there was no realistic prospect of Mr Fuchedzhy ever serving his sentence, given that he had been in hiding since 2014.

366. Furthermore, the applicants questioned the institutional and practical independence of the domestic investigation.

367. Some of the applicants[70] further submitted that the investigations had been highly politicised, with the authorities appearing keener to prosecute anti-Maidan activists rather than pro-unity supporters. They also alleged numerous incidents of threats and intimidation against them, their lawyers and the judges dealing with the relevant cases.

368. Lastly, all the applicants contended that the authorities had failed to properly inform them, as well as the public in general, about the ongoing investigations.

(ii) The Government

369. The Government argued that the domestic investigations, albeit they concerned extremely complex and unprecedented facts, had complied with the effectiveness criteria set forth in the Court's case-law. They submitted that the investigative efforts had been launched promptly after the events at issue and had involved a large variety of measures, such as the questioning of numerous witnesses, victims and suspects, searches and forensic examinations. The Government provided statistical information regarding the investigative measures taken in some criminal proceedings (see, for example, paragraphs 82, 84, 105 and 208 above).

370. The Government submitted that the considerable length of the investigations could be explained by the flight of suspects and the consequent need to stay proceedings. That said, they pointed out that numerous sets of criminal proceedings had progressed beyond the pre-trial investigation stage and had been examined by the courts.

371. The Government further listed the criminal proceedings, in which senior law-enforcement officials had faced or were facing criminal charges. In the Government's view, that was to be interpreted as an indication of a genuine effort to identify and punish all those responsible.

372. Overall, the Government contended that there were no reasons to question the completeness or efficiency of the investigations.

[70] Those in applications nos. 59339/17, 59531/17, 76896/17 and 47092/18.

(b) The Court's assessment

(i) General case-law principles

373. Whereas the general scope of the State's positive obligations might differ between cases where the treatment contrary to the Convention has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals, the procedural requirements are similar (see *S.M. v. Croatia* [GC], no. 60561/14, § 312, 25 June 2020). They primarily concern the authorities' duty to institute and conduct an effective investigation (ibid., § 313).

374. What form of investigation will achieve the purposes of Article 2 may vary depending on the circumstances. However, whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures (see *Al-Skeini and Others*, cited above, § 165).

375. The Court has also held that – although the Convention does not guarantee as such a right to have criminal proceedings instituted against third parties – even in cases of non-intentional interferences with the right to life or physical integrity, there may be exceptional circumstances where an effective criminal investigation is necessary to satisfy the procedural obligation imposed by Article 2. Such circumstances can be present, for example, where a life was lost or put at risk because of the conduct of a public authority which goes beyond an error of judgment or carelessness (see *Nicolae Virgiliu Tănase*, cited above, § 160, and the references therein).

376. Compliance with the procedural requirements of Article 2 of the Convention is assessed on the basis of several essential parameters: the adequacy of the investigative measures; the promptness and reasonable expedition of the investigation; its independence of anyone implicated or likely to be implicated in the events; as well as the involvement of the victim or the victim's family to the extent necessary to safeguard their legitimate interests and a sufficient element of public scrutiny. These elements are interrelated and each of them, taken separately, does not amount to an end in itself. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed (see, for example, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, §§ 172-79 and 225, 14 April 2015).

377. To be considered adequate, an investigation must be capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible (ibid., § 172). At the same time, in assessing the adequacy of an investigation, the Court has consistently interpreted that requirement as that of means and not of results. There is no absolute right to obtain the prosecution or conviction of any particular person where there were no culpable failures in seeking to hold

perpetrators of criminal offences accountable. Thus, the fact that an investigation ends without concrete, or with only limited, results is not indicative of any failings as such. Moreover, the procedural obligation must not be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities. Nevertheless, the authorities must take whatever reasonable steps they can to collect evidence and elucidate the circumstances of the case (see *S.M. v. Croatia*, cited above, §§ 315-16, with numerous further case-law references).

378. Where the official investigation leads to the institution of proceedings in the national courts, the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect the right to life through the law. In this regard, the national courts should not under any circumstances be prepared to allow life-endangering offences to go unpunished (see, for example, *Öneryıldız*, cited above, § 95, and *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 239, 30 March 2016).

379. In assessing the State's compliance with the requirement of promptness and reasonable expedition, the Court has held that, even where there may be obstacles or difficulties which prevent progress in an investigation or a trial in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in, or tolerance of, unlawful acts (see *Šilih v. Slovenia* [GC], no. 71463/01, § 195, 9 April 2009, and *Al-Skeini and Others*, cited above, § 167).

380. In so far as the independence requirement is concerned, it means not only a lack of hierarchical or institutional connection but also a practical independence (see *Mustafa Tunç and Fecire Tunç*, cited above, § 177). Also, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements (ibid., § 175).

381. In addition, the investigation must be accessible to the victim or his or her family to the extent necessary to safeguard their legitimate interests. There must also be a sufficient element of public scrutiny of the investigation, the degree of which may vary from case to case (see, among many other authorities, *Armani Da Silva*, cited above, § 235). The Court notes in this connection that, where allegations of serious human rights violations are involved in the investigation, the right to the truth regarding the relevant circumstances of the case does not belong solely to the victims of the crime and his or her family but also to other victims of similar violations and the general public, who have the right to know what has happened (see *Al-Hawsawi v. Lithuania*, no. 6383/17, § 186, 16 January 2024).

(ii) Application of the above principles to the circumstances of the present cases

382. It is undeniable that the tragic events in Odesa on 2 May 2014 triggered the respondent State's procedural obligation to institute and conduct an effective investigation in compliance with the standards of Article 2.

383. The Court will examine now whether the requirements enshrined in that provision were complied with.

(α) Adequacy of the investigation

384. The Court considers that the investigating authorities in the present cases did not make sufficient efforts to properly secure, collect and assess material, forensic, eyewitness, photographic and video evidence. The statistical information provided by the Government regarding various investigative measures (see paragraphs 82, 84, 105 and 208 above) is of little value to the Court's analysis in the absence of any factual details or documents. Furthermore, the effectiveness of an investigation cannot be gauged simply on the basis of the number of reports made, witnesses questioned or other investigative measures taken (see *Varyan v. Armenia*, no. 48998/14, § 127, 4 June 2024).

385. The Court notes, in particular, that, instead of putting in place a police perimeter to secure the affected areas of the city centre and ensuring an immediate on-site inspection by competent staff, the first thing the authorities did after the events was to send cleaning and maintenance services to thoroughly clean those areas (see paragraph 80 above). The earliest on-site inspection, which was carried out only almost two weeks later (see paragraph 81 above), did not and could hardly be expected to produce any meaningful results. While the Government referred to nine additional on-site inspections in the areas in question between 2016 and 2021, they failed to explain the purpose of those measures, given the considerable lapse of time. Nor did they specify the results, if any (see paragraph 82 above). Likewise, the collection of material evidence relating to the fire in the Trade Union Building must have been hampered by the fact that the building remained freely accessible to the public for seventeen days after the events (see paragraph 87 above).

386. As observed in the IAP report (see paragraph 265 above), in the days immediately following the events, there was no proper coordination of the measures taken to preserve and gather evidence. The IAP considered that this might have been related to the fact that, at that early stage, Mr Lutsyuk and then Mr Fuchedzhy, both of whom were subsequently made suspects in relation to the events of 2 May 2014, had still been in charge of the local police force, which had been responsible for carrying out the initial steps of the investigation.

387. The Court also notes some serious omissions regarding the securing and processing of forensic evidence. It appears that the bullet extracted from

the body of Mr Ivanov (application no. 59531/17) has never been examined by a forensic ballistics expert (see paragraph 83 above). Nor has it been established from which weapons the fatal shots had been fired at Mr Biryukov (application no. 59531/17), Mr Zhulkov, Mr Petrov and Mr Yavorskyy (application no. 76896/17) (ibid.). The manner in which the forensic evidence relating to the fire in the Trade Union Building was dealt with was equally deficient. It suffices to note in this connection that some essential forensic examination reports were only recently issued or still remained pending eight years after the events (see paragraphs 96-97 above).

388. It is also relevant to note that, although there existed extensive photographic and video evidence regarding both the clashes in the city centre and the fire in the Trade Union Building, the Court has not been provided with sufficient details as to how the investigation authorities dealt with that evidence and whether they took genuine efforts to identify all the perpetrators (see, in particular, paragraphs 84 and 98 above). The case-file material in the Court's possession is, however, sufficient for it to discern a number of serious shortcomings in this regard. It is noteworthy that no forensic identification was carried out with regard to the photographic and video evidence showing a pro-unity activist resembling Mr Goncharevskyy beating those jumping out of the Trade Union Building with a wooden stick, even though the need for such an investigative measure was stated on 3 July 2015 and reiterated on several occasions thereafter (see paragraphs 127 and 129 above). As regards the publicly available photographic and video evidence showing an anti-Maidan activist shooting in the direction of Maidan supporters at the time when Mr Ivanov (application no. 59531/17) was fatally injured, it appears that no forensic identification was ever ordered despite the fact that the 2 May Group had identified the activist in question as Mr Budko (see paragraphs 50-51 and 139-142 above). Likewise, no forensic identification appears to have been ordered or carried out with regard to the photographic and video evidence showing a pro-unity activist resembling Mr Khodiyak shooting in the direction of anti-Maidan protesters (see paragraphs 56 and 110-120 above).

389. The Court also notes that the criminal investigation in respect of Mr Khodiyak was discontinued on four occasions on identical grounds. By the domestic authorities' own admission, that was done "without a single investigative measure and in complete disregard of the earlier criticism" (see paragraph 118 above). The Court reiterates in this connection that the repeated remittals of the case for further investigation, along with the investigating authority's reluctance to follow the recommendations of the courts, point to serious defects in the investigation as a whole (see, for example, *Agarkova v. Russia*, no. 29951/09, § 61, 15 May 2018).

390. The Court next observes that, as admitted by the domestic authorities – notably, in the judgment of the Illichivsk Court of 18 September 2017 (see paragraph 134 above), the investigation in respect of nineteen

anti-Maidan activists suspected of organising and participating in mass riots was marred by numerous serious procedural flaws, as well as the investigating authorities' persistent disregard of the trial court's requests and instructions. In particular, the prosecution failed to submit any original photographic and video evidence or relevant ballistics reports to the trial court. The material evidence was declared inadmissible on the grounds that it had been collected by unauthorised persons or documented in breach of the applicable procedural rules. Furthermore, the prosecution had questioned only one police officer and not a single football fan involved in the events of 2 May 2014 (ibid.). The trial court stated that, because of the flagrant incompleteness and deficiencies of the investigation, it had been obliged to seek alternative sources of information (ibid.).

391. The Court has held in its case-law that procedural errors of an irremediable nature, committed by investigating authorities without any plausible explanation other than their manifest incompetence, are sufficient to render an entire investigation incompatible with Convention standards (see *Maslova and Nalbandov v. Russia*, no. 839/02, §§ 95-97, 24 January 2008, where the effectiveness of an investigation was analysed under Article 3 of the Convention). While in the present cases the judgment of the Illichivsk Court listing all the procedural flaws in the pre-trial investigation and acquitting the anti-Maidan activists was challenged by the prosecutor on appeal, it is difficult to envisage a remedy for those flaws and errors – on the one hand, owing to their serious nature, and, on the other, because the appellate proceedings in question have remained pending for about seven years to date (see paragraph 138 above).

392. In the Court's opinion, the overall quality of the investigations must have been adversely affected by the division of the investigative work between various authorities, even though it concerned the same set of closely related events (see paragraphs 100-102, 144-145 and 183 above). The Court is not aware of any efforts to coordinate the related investigations.

393. All the foregoing considerations lead the Court to conclude that the domestic investigation in the present cases was inadequate.

(β) Promptness and reasonable expedition

394. The Court notes that the domestic investigations were marred by various delays and significant periods of unexplained inactivity or even stagnation, and that the overall length of the proceedings has been excessive.

395. While the investigation into the mass disorder was instituted on the same day by the investigation unit of the Odesa Regional Police Department, a few days later, on 5 May 2014, it was decided to entrust it the MoI Main Investigation Department (see paragraph 100 above). However, on 15 January 2016 the investigation was transferred back to the investigation unit of the Odesa Regional Police Department on the grounds that "the criminal offences under investigation [had been] committed on the

territory of the city of Odesa" (see paragraph 101 above). The Court fails to understand why the domestic authorities needed more than a year and eight months to make such an obvious factual observation.

396. Despite publicly available photographic and video evidence showing an anti-Maidan activist resembling Mr Budko shooting an assault rifle in the direction of pro-unity protesters while standing side by side with the police, with no reaction whatsoever from the latter, it took the domestic authorities more than two years to launch a criminal investigation in that regard in respect of Mr Budko (see paragraphs 50-52 and 139 above) and more than seven years to institute criminal proceedings in respect of Mr Ivakhnenko, one of the police officials concerned (see paragraphs 176-177 above). No explanation, let alone justification, was ever provided for those delays. Since no preventive measure had been applied in respect of Mr Budko and he had gone into hiding, the investigation was stayed in October 2016 (see paragraphs 140-141 above). As regards the criminal proceedings in respect of Mr Ivakhnenko, they ended with his release from criminal liability owing to the expiry of the ten-year limitation period (see paragraph 178 above).

397. While the criminal investigation in respect of another police official, Mr Fuchedzhy, who had been directly involved in the decision-making process before and during the events, eventually ended in a guilty verdict, the initial delay of about two weeks in obtaining a warrant for his arrest gave him the opportunity to flee the country (see, in particular, paragraphs 150 and 161 above).

398. The Court next observes that, although the Ombudsperson had established and informed the prosecution authorities as early as June 2014 that the "Wave" contingency plan, applicable in the event of mass disorder. had not been implemented and that the documents relating to its alleged implementation had been forged, a notice of suspicion to Mr Lutsyuk, the Head of the Odesa Regional Police Department, was announced only almost a year later (see paragraphs 151 and 248 above). After the completion of the pre-trial investigation in February 2016, the case remained pending at the trial stage before the first-instance court for about eight years, after which, on 14 June 2024, Mr Lutsyuk was released from criminal liability on the grounds that the charges against him had become time-barred (see paragraphs 164-166 above).

399. Furthermore, while it was known from the outset that no reserve police resources had been deployed from the local garrison to quell the clashes in the city centre, and that those deployed from the football stadium had lacked proper protective equipment and means of restraint, a related criminal investigation in respect of the police official in charge (Mr Vdovychenko, the former Deputy Head of the Odesa City Police Department) was started only on 14 May 2021, that is to say more than seven years after the events. It took the investigating authority less than a month to complete the investigation and send the case to the trial court, where it

remains pending. With the expiry of the ten-year limitation period in May 2024, the outcome of that trial could be similar to those in respect of Mr Ivakhnenko and Mr Lutsyuk (see paragraphs 39 and 172-175 above).

400. No explanation has been provided to the Court for the duration, more than six and a half years, of the trial before the first-instance court in respect of the police officials Mr Netrebskyy, Mr Tashmatov and Mr Knyshov (see paragraph 171 above) or for the examination on appeal, more than seven years, of the prosecutor's appeal against the verdict of the Illichivsk Court acquitting the anti-Maidan activists (see paragraphs 136-138 above). While the requirement of promptness and reasonable expedition under Article 2 should not be examined in isolation and irrespective of the other parameters, the combination of which makes an investigation effective, the Court reiterates that the excessive length of proceedings is a strong indication that the proceedings are defective to the point of constituting a violation of the respondent State's positive obligations under the Convention, unless the State has provided highly convincing and plausible reasons to justify the length of the proceedings (see *Mazepa and Others v. Russia*, no. 15086/07, § 80, 17 July 2018).

401. While the Court does not have sufficient information regarding the criminal investigation instituted in respect of some police officials in May 2023 (see paragraphs 179-181 above), that investigation can hardly be expected to produce any tangible results now. Indeed, the mere passage of time, inevitably eroding the amount and quality of the evidence available, can work to the detriment of the investigation, and even fatally jeopardise its chances of success (see *Nicolaou v. Cyprus*, no. 29068/10, § 150, 28 January 2020).

402. Also, like the IAP in its report (see paragraph 265 above), the Court finds the deficiencies in the investigation into the conduct of the SES staff to be a striking example of a lack of diligence. Despite being aware of the fire resulting in a considerable loss of life and the delay in the fire brigades' arrival in spite of numerous emergency calls, the authorities did not commence the criminal investigation into the conduct of the SES staff until 16 October 2014 (see paragraph 184 above). Even then no real efforts to carry out the investigation were made, which became the reason for the case transfer from the Odesa Regional MoI Department to the MoI Main Investigation Department in December 2014 (see paragraph 183 above).

403. Although it was never disputed that Mr Bodelan, the former Head of the SES Main Department in the Odesa Region, had been responsible for the delayed deployment of fire engines to Kulykove Pole (see paragraphs 65 and 182 above), no criminal investigation was launched in respect of him until 1 March 2016 (see paragraph 186 above). In the meantime, he had continued his service at the aforementioned position until his contract expired in September 2014 (see footnote 61 above). In the absence of any notice of

suspicion of a criminal offence in his regard, he eventually fled the country (see paragraph 186 above).

404. The Court also notes that, while the criminal investigations in respect of Mr Goncharevskyy, who was suspected of assaulting those jumping from the Trade Union Building, and Mr Khodiyak, who was suspected of shooting a hunting gun in the direction of anti-Maidan protesters, were initiated without delay, they have been ongoing for more than ten years now without any tangible progress (see paragraphs 110-120 above).

405. All in all, the Court concludes that the domestic authorities caused prohibitive delays and allowed significant periods of unexplained inactivity and stagnation. This conclusion stands true regarding all the investigations concerned: in respect of private individuals, the police and the SES officials. This enabled many key suspects to abscond. Furthermore, the resulting expiry of the limitation period has already stripped the continuing investigations of any possible usefulness and therefore of any potential effectiveness (compare *Oghlishvili v. Georgia*, no. 7621/19, § 52, 4 July 2024).

406. Accordingly, the domestic investigation into the events of 2 May 2014 was neither promptly opened nor pursued with reasonable expedition.

(γ) Involvement of the victims or their next of kin and public scrutiny

407. The Court notes at the outset that Article 2 does not automatically require applicants to have access to police files or copies of all documents during an ongoing inquiry, or to be consulted or informed of every step. Nor does it require the investigating authorities to indulge every wish of a relative as regards investigative measures (see *Machalikashvili and Others v. Georgia*, no. 32245/19, § 93, 19 January 2023, and the references therein). What the Court must examine is whether applicants were involved in the investigation to the extent necessary to safeguard their legitimate interests.

408. This was clearly not the applicants' situation in the present cases. The Government did not refute the applicants' argument that they had not been duly informed of the progress of the investigations (see paragraph 368 above). Moreover, it appears that the applicants were often even unaware of the emergence of numerous new sets of proceedings (see, in particular, paragraph 293 above).

409. Furthermore, the Court does not lose sight of the findings made on several occasions by the domestic courts that the investigating authorities had wrongfully rejected the applicants' requests for procedural status of victims or had failed to deal with their requests at all (see, for example, paragraphs 108, 109, 114 and 117 above).

410. It follows that the applicants were unable to effectively pursue their legitimate interests in the domestic investigations.

411. The Court also emphasises the seriousness of the events giving rise to the present applications. For that reason, the right to the truth regarding the relevant circumstances did not belong solely to the victims and their families, but also to the general public, who had the right to know what had happened (see paragraph 381 above).

412. Regard being had to the scale of violence and its death toll, the involvement of supporters of two opposing political camps in the context of considerable social and political tensions, and the threat of an overall destabilisation of the situation, the authorities were obliged to do everything in their power to ensure transparency and meaningful public scrutiny of the investigations. Instead, as pointed out by the IAP in its report already in November 2015, there had been no effective communication policy in place, with the result that some of the information provided was difficult to understand, inconsistent, and unevenly presented and had been provided with insufficient regularity (see paragraph 268 above). The Court has not been provided with any information indicating that the situation has improved since then. It also notes that distortion of the events in Odesa eventually became a tool of Russian propaganda in respect of the war waged by the Russian Federation against Ukraine in February 2022 (see paragraph 227 above). Enhanced public scrutiny of the related investigative work by the Ukrainian authorities might have helped to counteract that propaganda effectively.

413. In the light of the foregoing, the Court finds that the Government did not comply with the requirement of Article 2 to ensure sufficient involvement of the victims and public scrutiny, which are necessary for the investigation to be considered effective.

(δ) Independence

414. The Court shares the view expressed by the IAP in its report that, given the evidence of police complicity in the mass disorder of 2 May 2014, the investigation into those mass disorder as a whole had to be carried out by an organ entirely independent from the police (see paragraph 262 above). The IAP considered that the MoI Main Investigation Department, which was then in charge of the investigations in respect of private individuals, did not comply with that requirement (ibid.) The Court notes that, two months after the publication of the IAP report, the relevant investigation was entrusted to the Odesa Regional Police Department (see paragraph 101 above), which was even more closely linked, both institutionally and in terms of personal contacts, to the police officials suspected of being implicated in the mass disorder under investigation. A lack of independence on the part of that authority might explain the lamentable quality of the pre-trial investigation in respect of the anti-Maidan activists (see paragraph 134 above).

415. The investigation into the conduct of the SES, which was carried out by the MoI Main Investigation Department, also lacked institutional and

practical independence, given the hierarchical relationship between those authorities (see paragraphs 183 and 259 above).

416. It follows that the domestic investigation in general lacked independence.

(ε) Impartiality

417. In so far as some applicants alleged a lack of impartiality in the investigation with the reference to the supposed preference for prosecution of anti-Maidan activists rather than their opponents, even though both had been involved in the clashes (see paragraph 367 above), the Court notes that that allegation is not supported by evidence. While it is true that, at the early stages of the investigation, suspects were mainly arrested from among anti-Maidan activists or supporters, the subsequent investigation in respect of those persons was so flagrantly deficient that it raised issues of either manifest incompetence by the authorities or sabotage of the investigative work in favour of the accused (see paragraph 134 above). At the same time, nothing indicates that the authorities were more diligent in investigating the deaths of pro-Maidan activists. The Court's extensive criticism of the domestic investigations into the events in Odesa on 2 May 2014 holds true for all the applicants, regardless of their political views or those of their deceased relatives.

418. Accordingly, the allegation of a lack of impartiality is, on the whole, unsubstantiated.

(στ) Conclusion

419. The Court concludes that the respondent State failed to institute and conduct an effective investigation into the tragic events in Odesa on 2 May 2014, which claimed the lives of the next of kin of twenty-five applicants and put the lives of three applicants in danger (see Appendix I).

420. The Court therefore dismisses the Government's preliminary objection, which it had previously joined to the merits of this complaint (see paragraph 305 above), and finds a violation of the procedural limb of Article 2 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION IN RESPECT OF MS VYACHESLAVOVA (APPLICATION No. 39553/16)

421. Relying on Articles 3 and 8 of the Convention, Ms Vyacheslavova complained about the delay in handing over her father's body for burial.

422. Having regard to its relevant case-law on the matter, the Court considers that the applicant's complaint should be examined solely under Article 8 of the Convention (see, for instance, *Gurbanov v. Armenia*,

no. 7432/17, §§ 54-56, 5 October 2023, with further references). The relevant part of that provision reads as follows:

> "1. Everyone has the right to respect for his private and family life...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

423. The Government submitted that Ms Vyacheslavova's complaint should be rejected as belated. They pointed out that the prosecution authorities had first rejected her request for the release of her father's body on 20 August 2014 and that the six-month time-limit had started running on that date. As she had not raised her complaint until 27 May 2016, the Government argued that she had not complied with the six-month rule.

424. Ms Vyacheslavova disagreed. She submitted that her complaint concerned a continuing situation, which had ceased to exist on 29 December 2015, when her father's body had finally been handed over to her for burial.

425. According to the Court's case-law, the concept of a "continuing situation" refers to a state of affairs which operates by continuous activities or omissions by or on the part of the State which render the applicants victims (see, for example, *Oliari and Others v. Italy*, nos. 18766/11 and 36030/11, § 94, 21 July 2015, and the references therein).

426. The Court notes that, in the present case, the applicant complained of a continued inability to recover her father's body for burial even though, in her view, all the legal preconditions for the body's release had been met. Accordingly, the substance of her complaint indeed concerns a continuing situation rather than specific decisions of the domestic authorities. As she lodged her application with the Court within six months from the date when her father's body was released for burial, she complied with the relevant admissibility criterion.

427. The Court notes that the Government did not dispute the applicability of Article 8 of the Convention to Ms Vyacheslavova's situation. Furthermore, this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

428. Ms Vyacheslavova submitted that once she had identified body no. 1616 as that of her father on 30 May 2014 and the autopsy report had been

issued on 10 June 2014, the prosecution authorities had no longer had any reason to retain her father's body.

429. The Government drew the Court's attention to numerous investigative measures carried out by the prosecution authorities to identify body no. 1616, which Ms Vyacheslavova had claimed was her father. Although those measures had indeed taken some time, in the Government's view, they only served to demonstrate the authorities' diligence.

430. The Court observes that the measure in question was based on the relevant provisions of the Code of Criminal Procedure (see paragraphs 235-236 above), the quality of which was not challenged by the applicant. It was therefore "in accordance with the law".

431. While accepting that the need for proper identification constitutes a legitimate aim for the retention of bodies by the authorities, the Court notes that the most recent identification measure in the present case took place on 31 August 2015, when a forensic medical expert concluded that the skull of body no. 1616 could be that of Mr Vyacheslavov (see paragraph 223 above). Although by that time it was the only body still considered unidentified and Ms Vyacheslavova had identified it several times as her father (on one occasion together with her mother and another relative), the investigator continued to retain it without any further identification measures being carried out until 29 December 2015 (see paragraphs 219-226 above). The applicant's numerous requests for the body's release were rejected merely by reference to similar rejections in the past (see paragraph 224 above). It was only thanks to the intervention of the Head of the UN Monitoring Mission that the body of Ms Vyacheslavova's father was released for burial (see paragraphs 225-226 above).

432. It follows that the body's retention by the authorities for at least four months (that is, starting from 31 August 2015) was devoid of any legitimate aim. In view of this conclusion, the Court is dispensed from having to examine whether the interference was necessary in a democratic society.

433. There has therefore been a violation of Article 8 of the Convention in respect of Ms Vyacheslavova.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Complaint under Article 3 of the Convention

434. The applicants additionally complained that the manner, in which the authorities had handled the investigation and had treated them, had caused them profound mental suffering and had therefore amounted to their ill-treatment in breach of Article 3 of the Convention.

435. The Court has never questioned in its case-law the profound psychological impact of a serious human rights violation on the victim's family members. However, in order for a separate violation of Article 3 of

the Convention to be found in respect of the victim's relatives, there should be special factors in place giving their suffering a dimension and character distinct from the emotional distress inevitably stemming from the aforementioned violation itself (see *Salakhov and Islyamova v. Ukraine*, no. 28005/08, § 199, 14 March 2013). Article 3 enjoins the authorities to react to the plight of the victim's relatives in an appropriate and humane way. On the other hand, in cases of persons who have been killed in violation of Article 2 of the Convention, the Court has held that the application of Article 3 is usually not extended to the relatives on account of the instantaneous nature of the incident causing the death in question (ibid., § 202).

436. The Court is mindful of the applicants' suffering in the present cases. However, it does not consider that it had a dimension and character which went beyond the suffering inflicted by grief following the wrongful death of a close family member and stemming from the absence of an effective investigation into the circumstances of that death. The Court has already found several violations of Article 2 of the Convention in that regard (see paragraphs 347, 354, 361 and 420 above). It must therefore dismiss this complaint under Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaint under Article 6 of the Convention

437. Lastly, Ms Berezovska (application no. 52632/16), Ms Olena Brygar (application no. 53467/16), Mr Dmitriyev, Ms Kovriga, Ms Lukas, Ms Pidorich and Ms Radzykhovska (application no. 59339/17), as well as Ms Gorenko (no. 76896/17), complained under Article 6 § 1 of the Convention that their civil claims in the criminal proceedings had not been dealt with within a reasonable time.

438. Having regard to the facts of the case, the parties' submissions and its findings under Article 2 of the Convention (see paragraphs 347, 354, 361 and 420 above), the Court considers that it has examined the main legal questions raised in the present cases and that there is no need to give a separate ruling on the admissibility and merits of the complaint under Article 6 (see, for example, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

439. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

440. Ms Vyacheslavova (application no. 39553/16) claimed 100,000 euros (EUR) and Ms Olena Brygar (application no. 53467/16) claimed EUR 30,000 in respect of non-pecuniary damage. The applicants in applications nos. 59339/17, 59531/17, 76896/17 and 47092/18 also made claims under this head, but left the amount to the Court's discretion. Ms Berezovska (application no. 52632/16) did not submit a claim for compensation in respect of pecuniary or non-pecuniary damage.

441. The Government contested the above claims.

442. Taking into account its findings concerning the applicants' complaints and ruling on an equitable basis, the Court considers it appropriate to award the following amounts in respect of non-pecuniary damage, plus any tax that may be chargeable:

- EUR 15,000 to Ms Olena Brygar (application no. 53467/16) and Ms Lyudmyla Brygar (application no. 59339/17) jointly;
- EUR 15,000 to Mr Ivanov and Ms Ivanova (application no. 59531/17) jointly;
- EUR 15,000 to Ms Gorenko, Mr Vladyslav Yavorskyy, Mr Viktor Yavorskyy and Ms Yavorska (application no. 76896/17) jointly;
- EUR 15,000 to Ms Marikoda and Mr Milev (application no. 47092/18) jointly;
- EUR 12,000 each to Mr Didenko, Mr Dmitriyev and Mr Gerasymov (application no. 59339/17);
- EUR 15,000 to each of the following applicants: Ms Babushkina, Ms Kovriga, Ms Lukas, Ms Mishyna, Mr Negaturov, Mr Petrov, Ms Pidorich, Ms Radzykhovska and Ms Yakhlakova (application no. 59339/17); Ms Biryukova (application no. 59531/17); Ms Petrova and Ms Zhulkova (application no. 76896/17); and Ms Nikitenko (application no. 47092/18); and
- EUR 17,000 to Ms Vyacheslavova (application no. 39553/16).

443. In the absence of any claim for just satisfaction from Ms Berezovska (application no. 52632/16), the Court considers that there is no call to award her any sum on that account.

B. Costs and expenses

444. Ms Vyacheslavova (application no. 39553/16) claimed EUR 7,050 for costs and expenses incurred before the Court, to be paid directly into Mr Tarakhkalo's bank account. In support of that claim, she submitted a legal assistance contract signed by her and Mr Tarakhkalo on 14 June 2016, providing for an hourly rate of EUR 150. According to the contract, payment was to be made after the conclusion of the proceedings in Strasbourg and up to the amount awarded by the Court in respect of costs and expenses.

Ms Vyacheslavova also submitted a report of 27 September 2023 on the work completed under the aforementioned contract. It specified that Mr Tarakhkalo had worked on the case for 47 hours and that the total amount due was EUR 7,050.

445. Mr E. Wesselink, on behalf of the applicants in applications nos. 59339/17, 59531/17, 76896/17 and 47092/18, claimed the following amounts for costs and expenses incurred before the Court and, as regards Ms Biryukova (application no. 59531/17) also for those incurred before the domestic courts, to be paid directly into the bank account of the Stichting Justice Initiative:

- EUR 4,494 jointly for the applicants in application no. 59339/17;
- EUR 3,210 jointly for the applicants in application no. 59531/17;
- EUR 2,247 jointly for the applicants in application no. 76896/17; and
- EUR 2,247 jointly for the applicants in application no. 47092/18.

446. In support of those claims, the lawyer submitted copies of legal services contracts signed between most of the applicants in the aforementioned cases and the Stichting Justice Initiative (with the occasional involvement of an external domestic lawyer) on various dates in late 2017 and early 2018 specifying the legal specialists' hourly rates, which ranged from EUR 25 to EUR 150, and stating that the applicants would be obliged to pay only in the event of a favourable outcome for them in the proceedings before the Court. Furthermore, the Court received copies of invoices sent to the applicants dated 1 September 2023 specifying the nature of the legal work and the number of hours spent, as well as administrative expenses estimated at 7% of the legal fees.

447. Ms Olena Brygar (application no. 53467/16) claimed EUR 1,500 for her legal representation before the Court. She referred to an "oral agreement" with her lawyer made in June 2016 but explained that there were no relevant documents.

448. The Government contested the above claims as unsubstantiated and exorbitant.

449. Ms Berezovska (application no. 52632/16) did not make a claim for costs and expenses.

450. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court also points out that, under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Chamber may reject the claim in whole or in part (see *Malik Babayev v. Azerbaijan*, no. 30500/11, § 97, 1 June 2017). In the present cases, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the following sums covering costs under all heads, plus any tax that may be chargeable to the applicants:

- regard being had to the legal aid already granted (see paragraph 2 above), EUR 6,200 to Ms Vyacheslavova (application no. 39553/16), to be paid into the bank account of Mr Tarakhkalo; and
- EUR 4,500 to the applicants in applications nos. 59339/17, 59531/17, 76896/17 and 47092/18 jointly, to paid directly into the bank account of the Stichting Justice Initiative.

451. In the absence of any supporting documents from Ms Olena Brygar (application no. 53467/16), the Court rejects her claim for costs and expenses as unsubstantiated (compare *Merabishvili v. Georgia* [GC], no. 72508/13, § 372, 28 November 2017).

452. Lastly, the Court notes that it is not called upon to make an award under this head to Ms Berezovska (application no. 52632/16).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Decides* to join the Government's preliminary objection concerning the exhaustion of domestic remedies on account of the ongoing criminal proceedings to the merits of the applicants' complaint under the procedural limb of Article 2 of the Convention and, having examined it, dismisses it;

3. *Declares* all the applicants' complaints under Article 2 of the Convention and Ms Vyacheslavova's complaint under Article 8 of the Convention (application no. 39553/16) admissible;

4. *Holds* that it is not necessary to examine the admissibility and merits of the complaints under Article 6 § 1 of the Convention raised by Ms Berezovska (application no. 52632/16), Ms Olena Brygar (application no. 53467/16), Mr Dmitriyev, Ms Kovriga, Ms Lukas, Ms Pidorich and Ms Radzykhovska (application no. 59339/17), as well as Ms Gorenko (application no. 76896/17);

5. *Declares* the remainder of the applications inadmissible;

6. *Holds* that there has been a violation of the substantive limb of Article 2 of the Convention on account of the respondent State's failure to do everything that could reasonably be expected of it in order to prevent the violence in Odesa on 2 May 2014 and to stop that violence after its outbreak, as well as its failure to ensure timely rescue measures for those trapped in the fire in the Trade Union Building;

7. *Holds* that there has been a violation of the procedural limb of Article 2 of the Convention;

8. *Holds* that there has been a violation of Article 8 of the Convention in respect of Ms Vyacheslavova (application no. 39553/16);

9. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) in respect of non-pecuniary damage, the following amounts plus any tax that may be chargeable:

- EUR 15,000 (fifteen thousand euros) to Ms Olena Brygar (application no. 53467/16) and Ms Lyudmyla Brygar (application no. 59339/17) jointly;
- EUR 15,000 (fifteen thousand euros) to Mr Ivanov and Ms Ivanova (application no. 59531/17) jointly;
- EUR 15,000 (fifteen thousand euros) to Ms Gorenko, Mr Vladyslav Yavorskyy, Mr Viktor Yavorskyy and Ms Yavorska (application no. 76896/17) jointly;
- EUR 15,000 (fifteen thousand euros) to Ms Marikoda and Mr Milev (application no. 47092/18) jointly;
- EUR 12,000 (twelve thousand euros) to Mr Didenko, Mr Dmitriyev and Mr Gerasymov (application no. 59339/17) each;
- EUR 15,000 (fifteen thousand euros) to each of the following applicants: Ms Babushkina, Ms Kovriga, Ms Lukas, Ms Mishyna, Mr Negaturov, Mr Petrov, Ms Pidorich, Ms Radzykhovska and Ms Yakhlakova (application no. 59339/17); Ms Biryukova (application no. 59531/17); Ms Petrova and Ms Zhulkova (application no. 76896/17); as well as Ms Nikitenko (application no. 47092/18); and
- EUR 17,000 (seventeen thousand euros) to Ms Vyacheslavova (application no. 39553/16);

(ii) in respect of costs and expenses, the following amounts plus any tax that may be chargeable to the applicants:

- EUR 6,200 (six thousand two hundred euros) to Ms Vyacheslavova (application no. 39553/16), to be paid into the bank account of Mr Tarakhkalo; and

- EUR 4,500 (four thousand five hundred euros) to the applicants in applications nos. 59339/17, 59531/17, 76896/17 and 47092/18 jointly, to be paid directly into the bank account of the Stichting Justice Initiative;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

10. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 13 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Mattias Guyomar President

APPENDIX I

No.	Application no. Case name Lodged on	Applicant's name Year of birth Residence and nationality (as indicated in the application form)	Survivor / Relative killed	Cause of death / Relevant circumstances
1.	39553/16 Vyacheslavova v. Ukraine 27/06/2016	**Olena Mykhaylivna VYACHESLAVOVA** 1976 Odesa Ukrainian	Mykhaylo Mykhaylovych VYACHESLAVOV (father)	Burns (fire in the Trade Union Building)
2.	52632/16 Berezovska v. Ukraine 26/08/2016	**Neonila Leonidivna BEREZOVSKA** 1953 Odesa Ukrainian	Leonid Viktorovych BEREZOVSKYY (son)	Intoxication by unidentified gases, fumes and vapours (fire in the Trade Union Building)
3.	53467/16 Brygar v. Ukraine 26/08/2016	**Olena Borysivna BRYGAR** 1979 Kalagliya Ukrainian	Volodymyr Anatoliyovych BRYGAR (spouse)	
4.	59339/17 Babushkina and Others v. Ukraine 04/08/2017	**Olga Volodymyrivna BABUSHKINA** 1981 Odesa Ukrainian	Anatoliy Andriyovych KALIN (spouse)	Carbon monoxide intoxication (fire in the Trade Union Building)

No.	Application no. Case name Lodged on	Applicant's name Year of birth Residence and nationality (as indicated in the application form)	Survivor / Relative killed	Cause of death / Relevant circumstances
		Lyudmyla Leonidivna BRYGAR 1962 Nadbuzke Ukrainian	Volodymyr Anatoliyovych BRYGAR (son) – see also application no. 53467/16	Intoxication by unidentified gases, fumes and vapours (fire in the Trade Union Building)
		Yuriy Volodymyrovych DIDENKO 1968 Serpukhov Ukrainian	Survivor, sustained burns and other injuries (fire in the Trade Union Building)	
		Sergiy Mykolayovych DMITRIYEV 1975 Tayirove Ukrainian	Survivor, sustained burns and other injuries (fire in the Trade Union Building)	
		Oleksandr Viktorovych GERASYMOV 1978 Odesa Ukrainian	Survivor, sustained burns and other injuries (fire in the Trade Union Building)	

No.	Application no. Case name Lodged on	Applicant's name Year of birth Residence and nationality (as indicated in the application form)	Survivor / Relative killed	Cause of death / Relevant circumstances
		Tetyana Sergiyivna KOVRIGA 1945 Odesa Ukrainian	Mykola Sergiyovych KOVRIGA (son)	Intoxication by unidentified gases, fumes and vapours (fire in the Trade Union Building)
		Iryna Yevgeniyivna LUKAS 1961 Odesa Ukrainian	Igor Erolovych LUKAS (son)	Carbon monoxide intoxication (fire in the Trade Union Building)
		Marianna Ivanivna MISHYNA 1985 Kobleve Ukrainian	Sergiy Sergiyovych MISHYN (spouse)	Intoxication by unidentified gases, fumes and vapours (fire in the Trade Union Building)
		Oleksandr Vitaliyovych NEGATUROV 1965 Odesa Ukrainian	Vadym Vitaliyovych NEGATUROV (brother)	Burns (fire in the Trade Union Building) – died in hospital several hours later, from a shock caused by heavy burns

No.	Application no. Case name Lodged on	Applicant's name Year of birth Residence and nationality (as indicated in the application form)	Survivor / Relative killed	Cause of death / Relevant circumstances
		Vitaliy Yuriyovych PETROV 1956 Odesa Ukrainian	Ganna Anatoliyivna VERENYKYNA (spouse)	Burns and intoxication by combustion products (fire in the Trade Union Building)
		Iryna Pavlivna PIDORICH 1976 Odesa Ukrainian	Nina Ivanivna LOMAKINA (mother)	Carbon monoxide intoxication (fire in the Trade Union Building)
		Olena Oleksandrivna RADZYKHOVSKA 1954 Odesa Ukrainian	Andriy Gennadiyovych BRAZHEVSKYY (son)	Fall from a height (fire in the Trade Union Building)
		Valentyna Petrivna YAKHLAKOVA 1940 Odesa Ukrainian	Petro Anatoliyovych KAIR (son)	Burns (fire in the Trade Union Building)

No.	Application no. Case name Lodged on	Applicant's name Year of birth Residence and nationality (as indicated in the application form)	Survivor / Relative killed		Cause of death / Relevant circumstances
5.	59531/17 Biryukova and Others v. Ukraine 04/08/2017	**Lyudmyla Ivanivna BIRYUKOVA** 1946 Odesa Ukrainian	Andriy Vasylyovych BIRYUKOV (son)		Firearm injuries (clashes in the city centre)
		Volodymyr Ivanovych IVANOV 1952 Bilgorod-Dnistrovskyy Ukrainian	Igor Volodymyrovych IVANOV (son)		Firearm injuries (clashes in the city centre)
		Lyubov Petrivna IVANOVA 1956 Bilgorod-Dnistrovskyy Ukrainian			
6.	76896/17 Gorenko and Others v. Ukraine 24/10/2017	**Yevgeniya Viktorivna GORENKO** 1978 Odesa Ukrainian	spouse	Mykola Anatoliyovych YAVORSKYY	Firearm injuries (clashes in the city centre)
		Vladyslav Mykolayovych YAVORSKYY 2009 Odesa Ukrainian	father		

No.	Application no. Case name Lodged on	Applicant's name Year of birth Residence and nationality (as indicated in the application form)	Survivor / Relative killed		Cause of death / Relevant circumstances
		Viktor Mykolayovych YAVORSKYY 2011 Odesa	father		
		Olena Anatoliyivna YAVORSKA 1973 Odesa Ukrainian	brother		
		Iryna Georgiyivna PETROVA 1954 Odesa Ukrainian	Gennadiy Igorovych PETROV (son)		Firearm injuries (clashes in the city centre)
		Rayisa Igorivna ZHULKOVA 1941 Odesa Ukrainian	Oleksandr Yuriyovych ZHULKOV (son)		Firearm injuries (clashes in the city centre)
7.	47092/18 Marikoda and Others	**Tamara Petrovna MARIKODA** 1945 Russian	son	Ivan Ivanovych MILEV	Intoxication by unidentified gases, fumes and vapours

No.	Application no. Case name Lodged on	Applicant's name Year of birth Residence and nationality (as indicated in the application form)	Survivor / Relative killed		Cause of death / Relevant circumstances
	v. Ukraine 01/10/2018	**Yevgen Ivanovych MILEV** 1980 Odesa Ukrainian	brother		(fire in the Trade Union Building)
		Lyudmila Vasiliyevna NIKITENKO 1960 Odesa Russian	Maksym Oleksiyovych NIKITENKO son		Fall from a height (fire in the Trade Union Building)

APPENDIX II

List of abbreviations:

HRMMU	United Nations Human Rights Monitoring Mission in Ukraine
IAP	International Advisory Panel
MoI	Ministry of the Interior
OHCHR	Office of the United Nations High Commissioner for Human Rights
PGO	Prosecutor General's Office
SES	State Emergency Service
SSU	Security Service of Ukraine