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Address by Nicolas Bratza

Ladies and Gentlemen,

It is a privilege for me to be able to present the Report of the International Advisory Panel on its review of the investigations into the tragic events in Maidan, which resulted in numerous deaths and serious injuries in the period up to 20 February 2014. The Panel was established by the Secretary General of the Council of Europe in April of last year with the role of overseeing those investigations and I am here today with the other two members of the Panel, Mr. Volodymyr Butkevich and Mr. Oleg Anpilov.

I would wish at the outset to correct certain common misconceptions about the Panel and its role. First and foremost, I would emphasise that it was not the Panel's function to conduct, or to assist in, the investigation of those events. That was, and remains, exclusively a matter for the Ukrainian authorities themselves and, more particularly, for the public prosecution service, the Ministry of the Interior and the State Security Service, which had responsibility for the various case-files in the Maidan-related investigations. The Panel's role under its Mandate was a very different one. It was to examine whether the investigations that were and are being carried out at national level meet all the requirements of the European Convention on Human Rights, as developed through the case-law of the European Court of Human Rights. These requirements are, in summary, that the investigations are independent, that they are carried out promptly and expeditiously, that they are effective and that they allow for sufficient public scrutiny and sufficient involvement of the victims and the families of the victims.

A second, related point I should stress is that it was not the Panel's task to examine the quality of the investigation of individual cases of death or injury, whether on the part of civilians or of law enforcement officers, or to establish for itself the facts which resulted in those deaths or injuries. Its role was rather to examine and report on whether the investigations at national level, seen as a whole, complied with international standards. As will be apparent from the Report, in making its assessment the Panel has, on occasions, scrutinised the adequacy of the investigations of individual incidents of particular notoriety. But this has been done not for the purpose of arriving at a conclusion on the quality of the specific investigation but rather as providing a valuable indication of the adequacy of the investigations seen as a whole.

The Panel's Report has been prepared after receiving detailed submissions, both in writing and in a series of meetings in Kyiv with representatives of the authorities and of non-governmental organisations, between August and December of last year. But the Panel has also sought to reflect in the Report relevant developments which have taken place up to 23 February of this year, insofar as these could be gleaned from information in the public domain.

The Report is a detailed one, in which the Panel found that in several respects the investigations carried out at national level had failed to satisfy the requirements of the Convention. In reaching these findings, the Panel expressly acknowledged the substantial challenges which had confronted the authorities since taking on the investigatory role in

February of last year – the unprecedented scale and breadth of the investigations into the Maidan events; the lack of any effective investigations by the previous authorities in the first three months of the Maidan demonstrations; the considerable problems posed by the fact that key figures of the former government had absconded from Ukraine and that documents had been lost or destroyed and weapons had disappeared; the lack of any identifying marks on the law enforcement officers, who took part in the violent events; and the competing demands made of the authorities in investigating other serious events which post-dated those in Maidan. These include the major conflict in the eastern regions of Ukraine and the investigation into the violent events in Odesa in May of last year, which the Panel has already begun to review under its Mandate.

However, as the Report also makes clear, these challenges could not excuse any failings which did not inevitably flow from them; the authorities remained under a continuing obligation to take all steps to ensure that the investigations comply with the requirements of Articles 2 and 3 of the Convention.

In many respects, the Panel found that they did not comply. The conclusions in the Report must be read as a whole but I would like to give a very brief summary of some of the principal findings of the Panel.

The Panel drew attention at the outset to the very real problem of impunity and lack of accountability of law enforcement officers in Ukraine, which had over several years been the subject of serious criticism by the European Court, as well as by international governmental and non-governmental authorities.

It was the view of the Panel that, despite the numerous calls which had been made to introduce an independent and effective mechanism within Ukraine for investigating crimes committed by law enforcement officers, there were several examples of a lack of practical independence in the Maidan investigations. In particular, the Ministry of the Interior had been given an investigative role in crimes which had undeniably been committed by law enforcement officers and had been allocated the investigation of crimes allegedly committed by the so-called *titushky*, despite the undisputed evidence that *titushky* had been engaged, supported, and armed by former officials of the Ministry.

The Report further contains a series of criticisms of the lack of effectiveness of the investigations. This was considered, first, to result from a number of deficiencies in the staffing and resources of the Prosecutor General's Office and in the allocation of the investigative work. The number of investigators devoted exclusively to the Maidan investigations was found by the Panel to have been wholly inadequate and lack of direction and continuity which resulted from the appointment of three Prosecutors General within a year, as well as the removal from their role of two of the leaders of the Maidan investigations, was found to have had a serious impact on their progress, quality and effectiveness. Further, the distribution of certain of the case-files between the Prosecutor General's Office, on the one hand, and the Kyiv City Prosecutors' Office and the Ministry of Interior, on the other, was found to have been neither coherent nor efficient.

The effectiveness of the investigations into the Maidan events was, in the view of the Panel, vitally dependent on close cooperation between the investigating authorities. The lack of such cooperation with the Prosecutor General's Office by the other two investigative

authorities was found by the Panel to have had a seriously negative impact on their effectiveness. There were, in its view, strong grounds to believe that the attitude of the Ministry of the Interior had been uncooperative and, in certain respects, obstructive. This was illustrated by the example given in the Report of the attempts of prosecutors to question and arrest certain Berkut officers.

A similar lack of cooperation was found on the part of the State Security Service in the investigations into the counter-Maidan operation. While the Panel questioned whether all had been done by the Prosecutor General's Office to ensure effective cooperation on the part of the two authorities, the principal responsibility lay in the Panel's view with those authorities.

The Panel also expressed concern about the decisions of the courts, which had in its view undermined the effectiveness of the Maidan investigations and, more generally, weakened the deterrent effect of the judicial system. In particular, the decision of the Percherski District Court to release to house arrest the commander of the Berkut unit, who had been charged with 39 murders and who has since his release disappeared, has had a serious impact on the progress and outcome of the investigations into one of the gravest episodes of violence at Maidan.

It was the view of the Panel that, as a direct consequence of these deficiencies, the investigative response to the violent events had been significantly protracted.

The Panel was further of the view that the events at Maidan were of such importance that the authorities were required to provide sufficient information about the investigations to facilitate meaningful public scrutiny of them. Here again, failings were found. While it was acknowledged that efforts had been made to inform the public, the Panel concluded that there was no coordinated communication policy in place between the three investigating bodies so as to ensure the delivery of consistent and comprehensive information about the investigations as a whole. Nor did the Panel consider that the information provided to the public was of itself sufficient to protect the rights and interests of the victims and next-of-kin.

Having reviewed the current status of the various case-files, the overall conclusion of the Panel was that substantial progress had not been made in the investigations and that, while this might to some extent be explained by the challenges faced, the deficiencies found had undermined the authorities' ability to establish the circumstances of the Maidan-related crimes and to identify those responsible.

I would wish however to end on a more positive note. The Panel established by the Secretary General is a new and, in many ways, a unique model. The investigatory responsibilities remain exclusively with the competent national authorities; but those investigations have been under continuous review by an international body as they have progressed. Investigation. The Panel would wish to acknowledge not only the cooperation which it received from the authorities in what has been a novel and demanding form of inquiry and at a very difficult time for the country, but what it found to be the genuine efforts on the part of the representatives of the prosecuting authorities to address more closely the international requirements which should govern the investigations.

In its concluding remarks, the Panel drew attention to the encouraging changes made during the course of the year to improve the level of compliance with international standards. Chief among these has been the creation of the Special Investigation Division, dedicated to the Maidan investigations and with staff from each of the three investigative bodies. There have already been signs of progress in the investigations since the SID was set up. But the Division was established many months after the events which it is to investigate and it remains to be seen whether it is able to provide solutions for both the lack of independence and the lack of effectiveness of the investigations, which have been identified in the Panel's Report.

The challenges facing the Maidan investigations remain formidable. It is fervently to be hoped that, guided by the conclusions of the Panel in its Report, they can be overcome and public confidence in the investigation can be instilled.